

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Standard Aromatics, Inc., Pension Plan

95-00060

Name of Respondents

Reich & Co., Inc.  
Steven Seffren

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**REPRESENTATION**

For Claimant: Standard Aromatics, Inc., Pension Plan ("Claimant"), did not appear at the evidentiary hearing conducted in this matter.

For Respondent: Reich & Co., Inc. ("Reich"), appeared, Eric J. Shames, Esq., in-house counsel for Reich & Co., Inc. located in New York, New York.

Respondent, Steven Seffren, did not appear at the evidentiary hearing conducted in this matter.

**CASE INFORMATION**

Statement of Claim filed: January 4, 1995.

Claimant's Submission Agreement signed on: December 22, 1994.

Statement of Answer filed by Respondent, Reich on: March 28, 1995.

Reich's Submission Agreement signed on: April 19, 1995.

Respondent Steven Seffren did not submit a Statement of Answer or execute a Submission Agreement as required by rule 10314(b) of Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date/Sessions:                      March 24, 1997                      -                      One Session

The hearing was held at the offices of NASD Regulation, Inc. located in New York City, New York.

Arbitrators present at the hearing: Marion Yuen, Robert Spangler and Blair Allen. Oaths of Arbitrator have been filed with NASD Regulation, Inc.

### **CASE SUMMARY**

Claimant, alleged that in December 1991, it opened an account with Vantage Securities the predecessor corporation of Respondent, through Respondent's broker Seffren. Claimant alleged that upon opening the account it transferred approximately \$127,306.00 into the account and subsequently made additional investments of \$88,000.00 upon Seffren's instructions.

Claimant alleged that when trading ended in the account in April 1992, the balance of the account was \$88,838.88. Claimant alleged that although trading only occurred for four and one-half months the account suffered \$144,400.00 in losses representing approximately 67% of the Claimant's aggregate investment. Claimant alleged that the account had a turnover ratio of 4.2 for the time period. Claimant alleged that 114 trades were settled in the account in under four and one-half months and characterized by frequent in and out trading. Claimant further alleged that Seffren's pattern of trading indicated that his overriding goal was a defraud Claimant by generating commissions.

Finally, Claimant alleged that Reich failed to adequately supervise the actions of Seffren.

Respondent Reich maintained that Claimant's Trust Agreement granted the trustees the power to appoint or employ agents to act on their behalf to invest the assets of the Trust. Reich alleged such discretion was never exercised by the trustees. Reich maintained that no fiduciary duty was transferred to Reich in regard to the management of Claimant's account since management of the account remained with trustee Marvin Balsam ("Balsam").

Reich maintained that it acted only as a broker/dealer in all transactions that were approved and ratified by Balsam, on behalf of Claimant. Reich maintained that Balsam never hired an investment counselor for a fee, rather he participated in the management of the account and that Balsam received confirms for each and every trade and monthly statements.

Reich maintained that it was not a fiduciary to the Claimant since such duty needed to be granted by the trustee, which it was not. Reich maintained that the trustee never desired nor intended for Reich to act as a fiduciary of the account.

### **RELIEF REQUESTED**

Claimant requested damages in an amount not less than \$144,400.00, plus interest at 9%, attorney's fees and costs.

Respondent Reich requested that the Statement of Claim be dismissed and that the costs and disbursements be assessed against the Claimant.

### **OTHER ISSUES CONSIDERED & DECIDED**

On March 23, 1997, Claimant requested a postponement on the hearing date scheduled for March 24, 1997. The Claimant's request was denied by the panel arbitration. Claimant did not appear at the evidentiary hearing.

### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant against Reich & Co. Inc., are dismissed with prejudice;
2. All claims asserted by Claimant against Steven Seffren, are dismissed without prejudice;
3. The parties are to bear their respective costs, including attorney's fees; and,
4. All other requests for relief are denied.

### FORUM FEES

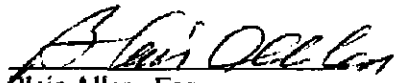
Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

Total Forum Fees:                      = \$750.00                      (1 session x \$750)

Claimant, Standard Aromatics, Inc., Pension Plan, is assessed the sum of \$750.00 representing the Total Forum Fees assessed, less \$750.00 previously deposited, leaving \$0.00 due.

**ARBITRATORS' SIGNATURES**

I, Blair Allen, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Blair Allen, Esq.

Chairperson, Public Arbitrator

Date of Decision November 21, 1997

I, Marion Yuen, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Marion Yuen  
Public Arbitrator

I, Robert J. Spangler, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Robert J. Spangler

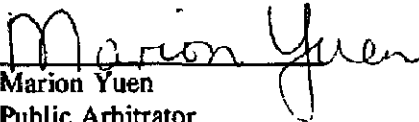
Date of Decision:

ARBITRATORS' SIGNATURES

I, Blair Allen, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Blair Allen, Esq.  
Chairperson, Public Arbitrator

I, Marion Yuen, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
\_\_\_\_\_  
Marion Yuen  
Public Arbitrator

I, Robert J. Spangler, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Robert J. Spangler

Date of Decision:

November 21, 1997

ARBITRATORS' SIGNATURES

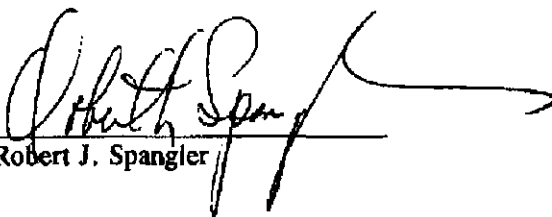
I, Blair Allen, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Blair Allen, Esq.  
Chairperson, Public Arbitrator

I, Marion Yuen, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Marion Yuen  
Public Arbitrator

I, Robert J. Spangler, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
\_\_\_\_\_  
Robert J. Spangler

Date of Decision:

November 21, 1997