

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Theodore Desch

95-01312

Name of Respondents

M. Rimson & Co., Inc.;
James (Igor) Shekhtman

REPRESENTATION

For Claimant: Theodore Desch ("Desch") was represented by Craig R. Thorstenson, Esq. of Thorstenson & Wetzel, located in Chicago, Illinois.

For Respondents: Respondents M. Rimson & Co., Inc. ("M. Rimson") and James (Igor) Shekhtman ("Shekhtman") did not appear at hearing.

CASE INFORMATION

Statement of Claim filed: March 14, 1995.

Claimant's Submission Agreement signed on: January 23, 1995.

Statement of Answer filed by Respondent Shekhtman on: July 21, 1995.

Respondent M. Rimson did not file a Statement of Answer.

Respondents M. Rimson and Shekhtman did not file executed Submission Agreements.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: February 2, 1996 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Desch, a public customer, was approached in August 1993 though a cold call by Respondent Shekhtman who identified himself as a stockbroker at Respondent M. Rimson & Co., Inc. During several conversations in August, September and October 1993, Shekhtman made a series of material false representations and omissions in an effort to sell Desch stock in Jutland Enterprises. Jutland was an over the counter stock traded only on the O.T.C. bulletin board.

Based on Shekhtman's representations and believing them to be true, during August through October 1993, Desch purchased 3000 shares of Jutland stock priced from \$7.75 to \$11.00 for a total of \$29,720.00. Between late October 1993 and June 1994, Desch received no telephone calls and no monthly statements from Shekhtman or anyone at M. Rimson. In June 1994, Desch learned that Jutland's stock had fallen to about 25 cents a share at which time he sold his shares for \$750.00

The Claimant asserted that Shekhtman (i) violated the NASD Rules of Fair Practice; (ii) violated Section 10(b) of the Securities and Exchange Act of 1934; and (iii) breached his fiduciary duty to Desch. The Statement of Claim alleges that M. Rimson (i) violated the NASD Rules of Fair Practice because it failed in its duty to supervise Shekhtman; (ii) is vicariously liable for Shekhtman's actions because it is a controlling person under Section 20(a) of the Securities and Exchange Act of 1934 and under the theory of respondent superior; and (iii) was unjustly enriched.

Respondent Shekhtman denied the material allegations of the Statement of Claim, alleging that: (i) all information regarding the investment was forwarded to Desch; (ii) Respondents did not misrepresent any of the facts and advised Desch to contact Jutland himself to check out the information; and (iii) any losses were the result of Desch's failure to reasonably manage his account.

RELIEF REQUESTED

Claimant Desch requested entry of an award for actual damages in the amount of \$28,970.00 and punitive damages in the amount of \$28,970.00.

Respondents made no specific relief requests.

OTHER ISSUES CONSIDERED & DECIDED

Respondents M. Rimson and Shekhtman did not file executed submission agreements, but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

Respondents M. Rimson and Shekhtman did not appear at hearing. The panel reviewed the NASD correspondence file in order to confirm that Respondents were properly served with the Statement of Claim and Notice of the Hearing as required by Section 25 and Section 26 of the

NASD Code of Arbitration Procedure. In addition, the Panel requested additional information from NASD employees and from Claimant's counsel, including having counsel place a telephone call to Respondents' known business number. Upon review of the above information, the Panel determined that both Respondents had been properly served with the Statement of Claim and Notice of the Hearing as required by Section 25 and Section 26 of the NASD Code of Arbitration Procedure. Based upon this determination, the Panel determined that the hearing would proceed pursuant to Section 29 of the NASD Code of Arbitration Procedure.

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. Respondents M. Rimson & Co., Inc. and James (Igor) Shekhtman are jointly and severally liable for and shall pay to Claimant Theodore Desch the sum of \$18,000.00 as actual damages;
2. The claim for punitive damages is dismissed and denied;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Respondent M. Rimson & Co., Inc. is liable for and shall pay to the NASD the sum of \$300.00 due as a surcharge pursuant to Section 45 of the NASD Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$500.00 per session = \$500.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and refund the \$500.00 hearing session deposit previously deposited by the Claimant, Theodore Desch. Respondents M. Rimson & Co., Inc. and James (Igor) Shekhtman are jointly and severally liable for and shall pay to the NASD the sum of \$500.00 as forum fees.

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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Date

/s/ Mary Beth Wheeler, Esq.
Mary Beth Wheeler, Esq.
Public Arbitrator
Chairperson

February 2, 1996

/s/ Woodrow A. Sutton, Jr.
Woodrow A. Sutton, Jr.
Public Arbitrator

February 2, 1996

/s/ Geoffrey L. Frankenthal
Geoffrey L. Frankenthal
Industry Arbitrator

February 2, 1996

For NASD Use Only

Date of Decision: February 2, 1996