

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

Marilyn and William S. Stein & Stein Family Partnership

95-01828

Name of Respondents

Washington Investment Corporation  
James Russel Johnson  
Richard Teal Barney  
Mark Burkhardt, and  
Robert Jack Rubel

REPRESENTATION

Morris J. Levin, Counsellor and Attorney at Law, Washington, D.C., represented Marilyn and William S. Stein & the Stein Family Partnership (collectively known as "Claimants") at the hearing.

Katherine H. Kalinowski, Esq., of the law firm of Baber & Kalinowski, P.C., Fairfax, VA, represented Respondents Washington Investment Corporation, James Russell Johnson, Richard Teal Barney, and Mark Burkhardt, (collectively known as "WIC Respondents") at the hearing.

Richard Mayberry, Esq., of the Law Office of Richard Mayberry, Washington, D.C. represented Respondent Robert Jack Rubel ("Rubel") at the hearing.

CASE INFORMATION

The Statement of Claim was filed by Claimants on April 19, 1995.  
Claimants' Submission Agreement was executed and notarized April 6, 1995.

WIC Respondents' Joint Statement of Answer was filed June 7, 1995.  
WIC Respondents' did not file a Uniform Submission Agreement.  
Rubel's Statement of Answer was filed August 10, 1995.  
Rubel's Submission Agreement was executed by Rubel on August 8, 1995.

HEARING INFORMATION

Hearing Date/Sessions:	March 18, 1996	2 sessions
	March 19, 1996	3 sessions
	March 20, 1996	2 sessions
	July 29, 1996	2 sessions
	July 30, 1996	2 sessions
	July 31, 1996	2 sessions
	September 9, 1996	2 sessions

September 10, 1996 3 sessions

Hearing Location: Holiday Inn Executive Center, 5655 Greenwich Road, Virginia Beach, VA 23462.

### CASE SUMMARY

Claimants alleged the following:

Claimants, by and through Marilyn ("M. Stein") and William Stein ("W. Stein"), were induced to buy an investment called Tandem Management Incorporated ("Tandem") which was promoted by Richard Teal Barney ("Barney") on a radio spot on or around May or June 1993. Barney was a broker/agent, employed by and representing Washington Investment Corporation ("WIC"). M. and W. Stein had originally telephoned Barney to inquire about the Tandem investment but thereafter Barney repeatedly telephoned M. and W. Stein about Tandem and the relationship WIC had with Tandem. Barney emphasized that the investment would be short-term and safe. Subsequently, M. and W. Stein ("the Steins") invested \$155,000.00, which they took from a Kidder, Peabody account, and gave to WIC to invest in Tandem on or around August 11, 1993. This was to be a managed account, pooled with other accounts, and all trades were to be made at Tandem's discretion. Subsequently, Barney induced the Steins to invest again. This time the investment was by and through Yu-Dee Chang ("Chang"), who sat at the Chicago Futures Exchange. The Steins invested \$60,000.00 of the Stein Family Partnership by sending \$60,000.00 to Barney to be invested with Chang. This was done on or around November 1993. Later, the Steins learned that Chang generated \$20,000.00 in commissions, he was not in Chicago but in suites shared and operated jointly with WIC, he worked for International Futures Corporation ("IFC"), which shared employee/agents with WIC, and he and Barney both traded in the account. Barney then told the Steins that he and WIC had great concerns about Tandem and started to promote a broker at WIC named Mark Burkhardt ("Burkhardt"), an excellent money manager. Barney assured the Steins that the investment with Burkhardt would be safe and short-term. The Steins refused to withdraw moneys placed with Tandem so shortly ago and instead, based on Barney's assurances, placed \$60,000.00 of the Stein Family Partnership with WIC to be managed by Burkhardt in December 1993. Burkhardt also began to tell the Steins to withdraw their money from Tandem and told the Steins that Tandem was buying some stocks at new highs while he was selling those same stocks. In March 1994, due to Barney and Burkhardt's comments, the Steins finally sold Tandem at a loss of approximately \$3,500.00 and subsequently invested \$151,500.00 with Burkhardt at WIC. The Claimants claim that each investment made by the Claimants in or through WIC was the result of false, fraudulent, and misleading information provided by WIC through its employees/agents. In addition, WIC Respondents and Rubel made misrepresentations concerning the investments and managers experience, failed to supervise its employees/agents, churned the accounts of Claimants, recommended investments that did not meet the needs and/or experience of the Claimants, breached a fiduciary duty to Claimants, committed common law fraud, and violated District of Columbia law. As a result of these actions, the Claimants have lost more than \$80,000.00 of the funds invested with the WIC Respondents and Rubel.

WIC Respondents answered as follows:

The WIC Respondents generally denied all allegations, claims, and items of damage set forth in the Statement of Claim. M. Stein called Barney and requested that Barney call W. Stein concerning Tandem mentioned in the radio spot broadcasted on or around May or June 1993. Barney did exchange calls with the Steins on a number of occasions between June and August 1993, but Barney did not call about touting Tandem to the Steins. Barney informed the Steins that WIC had no interest in Tandem and sent approved reprints about nationally ranked money managers performances. When the Steins did open

an account with Tandem, their broker of record was a Furman Selz, a broker-dealer not affiliated with WIC. The Steins told Barney that 1) they had five money managers who were engaged in a strategy of buy and hold, 2) they wanted the highest risk to reward potential in order to invest a percentage of their total investments, 3) they wanted short term investments to facilitate liquidity, and 4) therefore, they would be choosing Tandem, a fund investing in volatile short term issues. The Steins moved the money from their worst performing account into Tandem. It was apparent to Barney during these discussions that the Steins were sophisticated and wealthy investors with a long and active investment history. Since W. Stein was retired, the Steins had plenty of time to watch and direct their investments. The Steins continued their relationship with Barney and invested \$60,000.00 of the multimillion dollar Stein Family Partnership in a speculative commodity futures account opened at IFC, a registered commodities broker, which were later moved to a managed account at IFC. On or about October 26, 1993, M. Stein opened the first account with WIC through Barney. It was \$55,000.00 in municipal bonds and was under the control of the Steins. The Steins accepted all risks and involved themselves in their account regularly. This is evidenced by the Steins purchase and refusal to sell Telefonica de Argentina stock on an unsolicited basis. The Steins during this same time often requested Barney's opinion on Tandem's trading but this was difficult due to the difficulty Barney had in getting duplicate statements. In December 1993, the Steins decided to open an account of \$60,000.00, purchased with funds from the Stein Family Partnership, and executed a margin account form and an options account form. This account's purpose was high risk/high reward through active trading. Barney and Burkhardt were to be the brokers. At no time did Barney state there was to be a money manager on the account and at all times the Steins wanted to control the account as evidenced by their constant participation. As result of Tandem buying high and Tandem value going down, the Steins opened a joint account at WIC in early February 1994 with the Tandem funds. Again, speculation and maximized reward were the goal and margin and option account agreements were executed. As with the Stein Family Partnership account, the joint account traded with the goal of highest risk/reward potential. When losses reached a certain point, Burkhardt recommended reevaluation of the trading strategy but the Steins continued with that trading pattern. In February 1995, all accounts were liquidated and funds forwarded to Claimants. Any losses in the accounts were caused by the market and the Steins trading strategy and their vigorous control over the accounts. The Steins never requested safe investments.

Respondent Rubel answered as follows:

Rubel denied each allegation, claim, and item of damage of Claimants' Statement of Claim. Rubel denied any involvement in any the Steins' securities claims against WIC Respondents. Rubel's only contact with the Steins has been through IFC, a licensed commodities broker that engages solely in commodities and futures trading. IFC conducts no securities business. Rubel requested his dismissal as a party prior to the hearing based on his lack of contact with the Steins' securities transactions and requested reimbursement of his costs and attorney fees against the Claimants.

#### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$80,000.00, actual/compensatory, punitive damages of at least three times as much, plus interest and attorney's fees, jointly and severally against WIC Respondents and Rubel.

WIC Respondents filed an Answer to Claimants' Statement of Claim requesting dismissal of Claimants claim and counterclaimed against the Claimants, as trustees and managing partners of the Stein Family Partnership and the family trusts. In addition, WIC Respondents requested reimbursement of their cost and attorney's fees.

Rubel filed an Answer to Claimants' Statement of Claim requesting dismissal of the Claimants' claim, with costs and attorney's fees assessed against the Claimants.

#### OTHER ISSUES CONSIDERED & DECIDED

The parties present have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

Rubel moved to dismiss Claimants' Claim as to Rubel only, after Rubel's testimony. No opposition to the Motion to Dismiss was stated by WIC Respondents nor the Claimants. The panel granted Rubel's Motion to Dismiss as to Rubel, only, on March 18, 1996.

WIC Respondents filed a Statement of Answer, were represented at the hearing and participated in this arbitration. Pursuant to Rule 10301 (formerly Section 12), WIC Respondents were required to submit to this arbitration, therefore, the Panel exercised its jurisdiction over the WIC Respondents and they are bound by the Panel's decision.

#### 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. WIC Respondents, Washington Investment Corporation, James Russell Johnson, Richard Teal Barney, and Mark Burkhardt, are jointly and severally liable to the Claimants for \$3,000.00, and shall pay to the Claimants, the sum of \$3,000.00; no interest is awarded on this amount.
2. Each party shall pay its own costs and expenses, including attorneys' fees.
3. Claimants' request for punitive damages is denied.
4. Any relief not specifically addressed herein is denied.

#### FORUM FEES

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following forum fees are assessed:

18 hearing sessions X \$500 = \$9,000

Forum fees are assessed against the Claimants and WIC Respondents equally, so that Claimants are assessed forum fees in the amount of \$4,500; Claimants are entitled to offset this amount with their hearing session deposit of \$500 so that the amount due from Claimants is \$4,000. WIC Respondents are assessed forum fees in the amount of \$4,500.

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

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Concurring Arbitrators' Signatures

Arnald B. Crews  
Arnald B. Crews, Esq., Chairperson  
Public Arbitrator

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James F. Tucker  
Public Arbitrator

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Ronald T. Dilks  
Industry Arbitrator

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