

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Joann R. Schulz

Case No. 95-03043

Name of Respondents

Stuart, Coleman & Co., Inc.  
James P. Orazio  
Ronald E. Barsa  
J.R. Bautista, Jr.

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REPRESENTATION

For Claimant, Joann R. Schulz ("Schulz"): John M. Fedders, Esq. of Washington, D.C.

For Respondents, Stuart, Coleman & Co., Inc. ("Coleman"), James P. Orazio ("Orazio"), and Ronald E. Barsa ("Barsa"): Victor T. Sicurania of Stuart, Coleman & Co., Inc. New York, New York.

For Respondent, J.R. Bautista, Jr. ("Bautista"): David M. Garvin, P.A. of Miami, Florida.

CASE INFORMATION

Statement of Claim filed: June 22, 1995.

Claimant's Submission Agreement signed on: June 20, 1995.

Statement of Answer filed by Respondents, Coleman, Orazio and Barsa: July 28, 1995.

Statement of Answer filed by Respondent, Bautista: September 18, 1995.

Respondent, Coleman's Submission Agreement signed on: July 27, 1995, by Stuart Voisin on behalf of Coleman.

Respondent, Orazio's Submission Agreement signed on: July 27, 1995.

Respondent, Barsa's Submission Agreement signed on: July 27, 1995.

Respondent, Bautista failed to sign a Submission Agreement as required by Section 12 of the NASD Code of Arbitration Procedure. (See "Other Issues").

### HEARING INFORMATION

On March 19, 1996 in Tampa, Florida, a hearing lasting 2 sessions was conducted.

### CASE SUMMARY

Claimant alleged unauthorized trading and breach of fiduciary duty in that Respondent Bautista *purchased three (3) stocks for \$180,745.95 in Claimant's account without authorization.* Upon discovery by Claimant two (2) months later, Respondent Bautista refused to sell the stocks even after written and verbal instructions by the Claimant. The stocks were eventually sold approximately three (3) months after discovery of the unauthorized trades at a loss of \$37,624.75. Claimant also alleged Respondents Coleman, Orazio and Barsa failed to supervise by failing to adhere to Coleman's compliance procedures.

Respondents alleged that all trading was authorized and retained a margin account form that had a signature similar to other signatures of the Claimant. Respondents also relied on the margin account form which had a clause allowing confirmations to be questioned only within two to ten days of receipt of the confirmation as per the Uniform Commercial Code, Article 8. Respondents, Coleman, Orazio and Barsa denied failing to supervise because they investigated and found the trading to be authorized.

### RELIEF REQUESTED

Claimant requested compensatory damages of \$37,624.75, punitive damages, costs of claim, prejudgment interest and attorney's fees and expenses, and for such other relief as the Arbitrators deem just and proper.

Respondents, Coleman, Orazio, and Barsa requested that the Statement of Claim be dismissed in all respects.

Respondent, Bautista requested that the Statement of Claim be denied and that this action be dismissed.

### OTHER ISSUES CONSIDERED & DECIDED

1. The parties 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.
2. On March 6, 1996, Respondents, Orazio and Barsa, were dismissed without prejudice by Claimant.
3. Chairperson Harold M. May was unable to attend the hearing. The parties, however, agreed to proceed with the hearing and agreed to having Richard D. Flemings serve as Chairperson.
4. The Panel finds that Respondent Bautista was required to sign a Submission Agreement as required by Section 12 of the Code, Bautista being a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred.

#### 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. Respondent, Bautista, is found liable and shall pay to the Claimant the amount of \$4,999.00.
2. Respondent, Coleman, is found not liable and, therefore, all claims against it are hereby dismissed.
3. Claimant's request for punitive damages, costs of claim, prejudgment interest and attorney's fees, and expenses are hereby denied.

#### OTHER COSTS

Other than the Forum Fees detailed below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

## FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (2 sessions x \$400.00 per session).
2. Respondent, Bautista is hereby assessed forum fees in the amount of \$800.00 of which \$400.00 shall be paid directly to the Claimant as a refund of her hearing session deposit and \$400.00 of which shall be paid to the NASD.
3. The Respondent shall pay to the Claimant the \$120.00 non-refundable filing fee previously paid by Claimant.
4. The NASD shall retain the \$400.00 hearing session deposit and the \$120.00 non-refundable filing fee.

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

### Concurring Arbitrators' Signatures

Name

/s/  
Richard D. Flemings

**Chairperson/Public**

/s/  
Keith L. Jacobus

### Panelist/Industry

**Date of Decision:** May 3, 1996