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NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Peter A. and Sharon L. Maul

95-03077

Name of Respondents

M. Rimson & Co.
Larry Shtrayker (a/k/a Valery Shtraykher)

REPRESENTATION

For Claimants Peter A. and Sharon L. Maul ("Claimants"): appeared pro se.

For Respondent Larry Shtraykher ("Shtraykher"): appeared pro se.

M. Rimson & Co. ("Rimson") did not appear and was not represented.

CASE INFORMATION

Statement of Claim filed: June 21, 1995.

Claimants' Submission Agreement signed on: June 9, 1995.

Statement of Answer and Cross-Claim filed by Shtraykher on: October 24, 1995.

Shtraykher's Submission Agreement signed on: October 30, 1995.

Rimson did not file an answer or a submission agreement.

HEARING INFORMATION

Pre-Hearing Conference: April 4, 1996 - one session with Chairperson

Hearing Date/Sessions: June 17, 1998 - one session

Hearing Location: Marriott Hotel, Albany, NY

CASE SUMMARY

Claimants alleged that Shtraykher, an account representative for Rimson, called Mr. Maul on August 23, 1994 and induced Claimants' to purchase Metro Wireless Interactive CRP ("Metro Wireless"). Claimants alleged that Shtraykher told Mr. Maul that he highly recommended Metro Wireless. Claimants alleged that Respondents pressured Claimants into purchasing Metro Wireless and that Shtraykher told Mr. Maul

that he would monitor Claimants' account and that if the stock price fell by 10%, Shtraykher would sell Claimants' position. Claimants alleged that Shtraykher called again on August 30, 1994 to purchase more shares of the same stock. Claimants alleged that Mr. Maul told Shtraykher that he had invested all his money in Metro Wireless already. Claimants alleged that Shtraykher continued to pressure Mr. Maul to purchase more shares. Claimants alleged that Shtraykher assured Mr. Maul that their money would be safe and that he would carefully monitor Claimants' account. Claimants asserted that, based on Shtraykher's representations, they purchased more shares of Metro Wireless. Claimants alleged that Mr. Maul told Shtraykher that to purchase more shares of Metro Wireless that he would have to use money from Claimants' home equity loan to purchase more shares. Claimants alleged that about a month later, Mr. Maul received another call from Shtraykher to purchase shares in Metro Wireless. Claimants alleged that in this call Shtraykher was selling to Mr. Maul as if he was a new client. Claimants alleged that at this point Mr. Maul became very concerned and tried to sell their stock. Claimants alleged that Shtraykher was never available to take Mr. Maul's call and another representative told Mr. Maul that he could not sell Claimants' stock because he was not Claimants' broker. Claimants alleged that a representative at Rimson told Mr. Maul that the stock was quoted at 4, but that when Mr. Maul called the clearing firm Emmett A. Larkin Company, Inc., he learned that Metro Wireless was quoted at 1/4. Claimants alleged that Respondents made misstatements to induce Claimants to purchase Metro Wireless and that Respondents failed to sell the stock when the stock went down 10% as promised.

Shtraykher categorically denied all allegations of wrongdoing asserted by Claimants and maintained that he never sold any stock nor did he ever speak to Mr. Maul. Shtraykher maintained that he has never done business with Claimants and that this may be a case of mistaken identity. Shtraykher asserted a cross claim against Rimson for contribution or indemnification. Shtraykher alleged that if he is found liable to Claimants then any damages caused to Claimants was the proximate result acts of Rimson and/or its employees.

Respondent Rimson did not file an answer.

RELIEF REQUESTED

Claimants requested damages in the amount of approximately \$27,000; plus interest, attorneys' fee, and punitive damages.

Shtraykher requested that Claimants' claim be denied, that he be awarded costs and disbursements, including reasonable attorney's fees. Shtraykher requested on his cross-claim, if there is an award in favor of Claimants against him, that he be awarded on his claim against Rimson for the amount awarded to Claimant on their claim or the amount representing Rimson's proportionate share.

OTHER ISSUES CONSIDERED & DECIDED

On September 11, 1997, M. Rimson & Co., Inc. filed a Notice of Bankruptcy and Claimants' claim was automatically stayed against Rimson. The Panel, therefore, made no decision as to Claimants' claim against Rimson.

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

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copies of the Award while the originals remain on file with NASD Regulation, Inc. ("NASD Regulation").

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. Claimants' claim against Larry Shtraykher is denied in its entirety.
2. That the parties shall bear their respective costs including attorneys' fees except as forum fees are addressed below.
3. That any and all claims and cross-claims not specifically addressed herein are denied in their entirety.

OTHER COSTS

On October 24, 1995, Shtraykher filed a cross-claim, the filing fee of \$500 and hearing session deposit of \$400 that have not been paid.

On March 18, 1996, Shtraykher requested a postponement which was granted. Shtraykher's postponement fee of \$400 remains due and owing to NASD Regulation.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

$(1 \text{ pre hearing conference} \times \$300) + (1 \text{ hearing session} \times \$400) = \$700$

Forum Fees Assessed Against: Claimants 50% and Shtraykher 50%.

Claimants are assessed forum fees in the amount of \$350. Claimants are entitled to offset this amount with their hearing session deposit of \$400 previously paid so that Claimants are entitled to a refund of \$50. Shtraykher is assessed forum fees in the amount of \$350. Shtraykher owes NASD Regulation his filing fee of \$500, a forum fee of \$350 and a postponement fee of \$400; for a total amount of forum fees and costs of \$1,250 due.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

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DATE SIGNED

Concurring Arbitrators' Signatures

I, David W. Morris, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

7/28/98



David M. Morris, Esq., Chairperson
Public Arbitrator

I, Stephen T. Rodriguez, do hereby affirm, pursuant to
article 7507 of the Civil Practice Law & Rules,
that I am the individual described herein and
who executed this instrument which is my Award.

Stephen T. Rodriguez, Panelist
Public Arbitrator

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

Catherine Ladnier, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

August 10, 1998

DATE SIGNED

Concurring Arbitrators' Signatures

I, David W. Morris, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

David M. Morris, Esq., Chairperson
Public Arbitrator

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Public Arbitrator

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Catherine Ladnier, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation: August 10, 1998

C/S 10/10/98

DATE SIGNED

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David M. Morris, Esq., Chairperson
Public Arbitrator

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Catherine Ladnier, Panelist
Industry Arbitrator

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