

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Wayne H. Sapp

95-03522

Name of Respondents

R.K. Steele  
Richard K. Steele, Sr.  
Michael McFarquhar

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**REPRESENTATION**

For Claimant Wayne H. Sapp ("Claimant") appeared Martin L. Feinberg, Esq., a sole practitioner with law offices located in New York, New York.

Respondent R.K. Steele ("R.K. Steele") did not enter an appearance in this matter.

Respondent Richard K. Steele, Sr. ("Steele") did not enter an appearance in this matter.

Respondent Michael McFarquhar ("McFarquhar") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim was filed on July 20, 1995. Amended Statement of Claim was filed on August 5, 1997. Claimant's Submission Agreement was signed on July 16, 1995.

R.K. Steele did not file a Statement of Answer or a Submission Agreement.

Steele did not file a Statement of Answer or a Submission Agreement.

McFarquhar's Statement of Answer was filed on March 16, 1998. McFarquhar did not file a Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:	February 27, 1996	-	One Session
	May 5, 1998	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimant alleged that Steele, R.K. Steele's owner, converted funds that he invested to purchase shares in a private placement of Advantage Life Products, Inc. ("Advantage Life"). Claimant further alleged that McFarquhar, a personal friend, recommended this investment even though it was unsuitable for him. Claimant asserted that he also invested in Western and Pacific Resource ("W&P") at the recommendation of McFarquhar, and that this investment was also unsuitable. Claimant contended that Respondents recommended unsuitable investments, misrepresented or omitted material facts in connection with his investments, converted the funds he invested, and tried to pacify him by assuring him that he would receive the Advantage Life securities he purchased. Claimant further contended that this conduct violated the anti-fraud provisions of the federal securities laws, violated the shingle theory, constituted fraud and breach of contract. Claimant asserted that R.K. Steele and Steele's conduct constituted conversion, breach of fiduciary duty, and violated the RICO Act. Claimant further asserted that R.K. Steele and Steele failed to supervise McFarquhar and were liable under the doctrine of *respondeat superior*.

McFarquhar maintained that all recommendations made to Claimant were based on R.K. Steele's research, and he was not allowed to recommend any investment other than the approved investments of R.K. Steele. McFarquhar further maintained that Claimant followed him from firm to firm, and that Claimant's investment objective was always speculation with a high tolerance for risk. McFarquhar asserted that he and Claimant discussed Advantage Life, the financial position of the firm, Claimant's financial position, and the suitability of the investment. McFarquhar further asserted that Claimant agreed to invest in Advantage Life and signed the necessary forms to do so. McFarquhar maintained that the same steps were taken with Claimant's investment in W&P. McFarquhar contended that, when Claimant did not receive the stock certificates for Advantage Life, he contacted Steele numerous times on Claimant's behalf and was told that the certificates were being mailed. McFarquhar further contended that he contacted Advantage Life to find the certificates and was told that Claimant was not on the list as participating in the investment. McFarquhar asserted that Claimant attempted to get his funds returned from Steele and, when Steele refused, Claimant filed for arbitration.

### RELIEF REQUESTED

Claimant requested an award against Steele, R.K. Steele, and McFarquhar, jointly and severally, of:

- (a) with respect to Advantage Life:
  - (1) compensatory damages equal to the \$10,000.00 invested in Advantage Life and interest at the legal rate of 9% per annum (under New York law) or 10% per annum (under California law) and

- (2) punitive damages in an amount double the amount of compensatory damages;
- (b) with respect to W&P:
  - (1) compensatory damages equal to the \$1,787.50 invested in W&P and interest at the legal rate of 9% per annum (under New York law) or 10% per annum (under California law) and
  - (2) punitive damages in an amount double the amount of compensatory damages;
- (c) costs, expenses and disbursements, including reasonable attorneys' fees; and
- (d) such other and further relief as the arbitration panel deems just and proper.

Claimant further requested an award against Steele and R.K. Steele, jointly and severally, of RICO relief equal to treble the compensatory damages.

McFarquhar requested that the Statement of Claim be dismissed.

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

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 original remains on file with the NASD.

The panel made the following determinations concerning R.K. Steele and Steele, who did not file a Statement of Answer or a Submission Agreement and who failed to appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that R.K. Steele was a member of the NASD and that Steele was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over R.K. Steele and Steele pursuant to Rule 10301 of the Code.
3. The panel found that R.K. Steele and Steele were required to file a Statement of Answer and Submission Agreement with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon R.K. Steele and Steele pursuant to Rule 10314(a) of the Code.
4. In accordance with Rules 10310, 10315, and 10318 of the Code, the panel found

that NASD Regulation, Inc. provided R.K. Steele and Steele with "due notice" of the hearing conducted in this matter. Accordingly, the panel determined to proceed with the hearing without R.K. Steele and Steele.

### 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. With respect to the Advantage Life Products, Inc. claim:
  - (a) R.K. Steele and Richard K. Steele, Sr. are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$10,000.00, plus interest at 9% per annum, accruing from July 22, 1992 until the date the award is satisfied.
  - (b) R.K. Steele and Richard K. Steele, Sr. are jointly and severally liable for and shall pay to Sapp punitive damages on the conversion claim in the amount of \$20,000.00, plus interest at 9% per annum, accruing from July 22, 1992 until the date the award is satisfied.
2. R.K. Steele, Richard K. Steele, Sr., and McFarquhar are jointly and severally liable and shall pay to Claimant the sum of \$520.00 as reimbursement of the non-refundable filing fee and hearing session deposit.
3. The panel finds and determines that McFarquhar was negligent in offering Advantage Life Products, Inc. to an investor who was not an "accredited investor."
4. All claims against McFarquhar are denied.
5. Claimant's requests for attorney's fees and RICO relief are denied.
6. All other requests for relief are hereby denied.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

non-refundable filing fee	= \$ 120.00
3 hearing sessions x \$400.00	= <u>\$1,200.00</u>
Total forum fees	= \$1,320.00

1. R.K. Steele, Steele, and McFarquhar are jointly and severally liable for the sum of

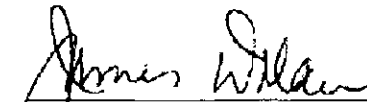
\$1,320.00, representing the total forum fees assessed. Claimant previously paid \$520.00 to NASD Regulation, Inc., and, therefore, R.K. Steele, Steele, and McFarquhar shall pay the balance of \$800.00 to NASD Regulation, Inc. and shall pay Claimant \$520.00 as provided in the "Award" section above.

2. Pursuant to Rule 10333 R.K. Steele shall pay to NASD Regulation, Inc. the \$200.00 past due member surcharge previously invoiced.

**ARBITRATION PANEL**

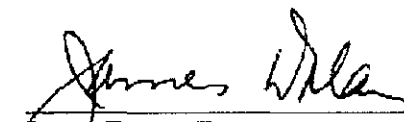
James Dolan, Esq.	-	Public Chairperson
Edward M. Miller, PhD	-	Public Arbitrator
David W. Haynes	-	Industry Arbitrator

Arbitrator's Signature

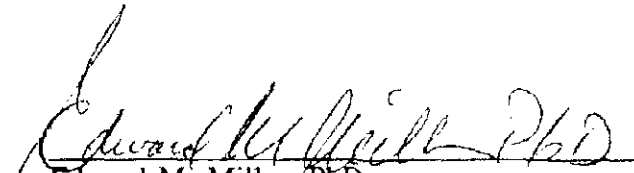
  
James Dolan, Esq.  
Chairperson - Public Arbitrator

Date of decision: June 16, 1998

I, James Dolan, 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.

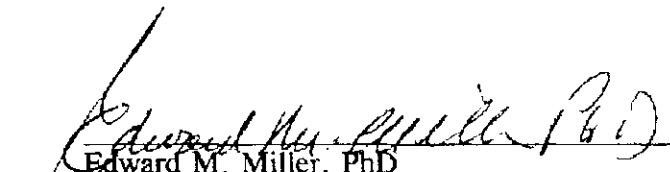
  
James Dolan, Esq.

Arbitrator's Signature

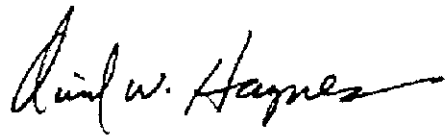
  
Edward M. Miller, PhD  
Public Arbitrator

Date of decision: June 16, 1998

I, **Edward M. Miller, PhD**, 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.

  
Edward M. Miller, PhD

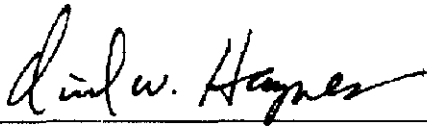
Arbitrator's Signature

A handwritten signature in cursive script, reading "David W. Haynes", written in black ink.

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David W. Haynes  
Industry Arbitrator

Date of decision: June 16, 1998

I, **David W. Haynes**, 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.

A handwritten signature in cursive script, reading "David W. Haynes", written in black ink.

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David W. Haynes