

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

James Kaster, Michael, Phil  
& Nick Colich, Jr., Paul Schneck,  
Mary Ann Boda, Mark Wernick,  
Gary Berg, Stephen Levine, Duane L. Graff,  
John Maas,

Claimant,

v.

No. 95-03572

R.J. Steichen & Co.,

Respondent.

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**REPRESENTATION OF PARTIES**

Claimants James Kaster, Michael, Phil & Nick Colich, Jr., Paul Schneck, Mary Ann Boda, Mark Wernick, Gary Berg, Stephen Levine, Duane L. Graff, John Maas, ("Claimants") were represented by Alain Baudry, Esq. of Maslon, Edelman, Borman & Brand located in Minneapolis, MN.

Respondent R. J. Steichen & Co. was represented by Frank A. Taylor, Esq. of Popham Haik et. al. Esq. located in Minneapolis, MN.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 24, 1995.

Claimants' Submission Agreements were each signed on July 20, 1995.

Statement of Answer was filed by Respondents on or about September 22, 1995.

Respondent's Submission Agreement was signed on September 21, 1995 by Eric Ries, Compliance Officer.

**HEARING INFORMATION**

Pre-Hearing conference date April 26, 1996 for one (1) session.

The Hearing dates were May 1, 1996 for two (2) sessions, May 2, 1996 for two (2) sessions, May 3, 1996 for two (2) sessions.

The Hearing Location was Minneapolis, MN.

CASE SUMMARY

Claimants alleged that Scott Rude ("Rude") a registered representative of Respondent solicited the Claimants at various time to purchase equity securities issued by Omni International Trading, Inc. ("Omni"). In connection with the sale of Omni Claimants allege causes of action including: Violation of Minn. Stat. Section 80A.08; Violation of Section 12(1) of the Securities Act of 1933; Violation of Section 10b of the Securities Exchange Act of 1934, and Rule 10b-5 Promulgated pursuant thereto; Violation of Minn. Stat. Section 80A.01; Violation of Minn. Stat. Section 325F.69 subd. 1; Fraud in the Inducement; Negligent Misrepresentation; Fraudulent Misrepresentation; Control Person liability Under Section 15 of the Securities Act and Section 20A of the Exchange Act; Control Person Liability under Minn. Stat. Section 80A.23; Negligent Supervision; and Respondeat Superior Liability.

Respondent denied any liability for the Claimants' causes of action and alleged that many of the Claimants never had an account with Respondent. Further Respondent alleged that it did not sell, have any knowledge of or have any reason knowledge of the offer or sale of Omni securities. Respondent also made affirmative defenses including; The Claimants did not rely on any misrepresentation, omissions, actions or inaction of Respondents; The Claimants alleged injury was not caused by misrepresentations, omission, actions or inaction of Respondent, Any injury that the Claimants may have suffered was caused by their negligence of fault, or the negligence of fault of persons not a party to this arbitration; Any damages or losses suffered by the Claimants were caused by risks of which they were well aware, understood, and knowingly and voluntarily assumed; The Claimants have failed to state a claim against Respondent upon which relief may be granted; Respondent did not know and by an exercise of reasonable care could not have known of any facts by reason of which liability could exist; Respondent did not induce, either directly or indirectly, any actions which violated securities laws; Claimants have failed to mitigate their damages if any; Respondent is not responsible for the acts of others outside the scope of their employment agreement.

RELIEF REQUESTED

Claimants requested rescission of all the securities purchased, \$340,000.00 plus interest, costs, attorney' fees, alternatively an amount in excess of \$50,000.00 plus interest thereon, costs and reasonable attorneys fees, punitive damages, other relief as the Arbitrators deem just and equitable.

Respondent requested that the Statement of Claim be dismissed with prejudice, that the panel award Respondent its costs and expenses reasonable attorneys' fees, disbursements and expenses and other costs that the panel deems just.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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.

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). That the Respondent is liable for and shall pay Claimant James Kaster \$17,000.00 in compensatory damages;
- (2). That the Respondent is liable for and shall pay Claimant Michael Colich \$20,000.00 in compensatory damages;
- (3). That the Respondent is liable for and shall pay Claimant Phil Colich \$10,000.00 in compensatory damages;
- (4). That the Respondent is liable for and shall pay Claimant Nick Colich, Jr. \$10,000.00 in compensatory damages;
- (5). That the Respondent is liable for and shall pay Paul Schneck \$9,000.00 in compensatory damages;
- (6). That the Respondent is liable for and shall pay Mary Ann Boda in \$1,750.00 in compensatory damages;
- (7). That the Respondent is liable for and shall pay Mark Wernick \$5,000.00 in compensatory damages;
- (8). That the Respondent is liable for and shall pay Gary Berg \$2,000.00 in compensatory damages;
- (9). That the Respondent is liable for and shall pay Stephen Levine \$5,000.00 in compensatory damages;
- (10). That the Respondent is liable for and shall pay Duane L. Graff \$40,000.00 in compensatory damages;

(11). That the Respondent is liable for and shall pay John Maas \$50,000.00 in compensatory damages;

**FORUM FEES**

Pursuant to Section 43(c) of the Code, the following forum fees are assessed: One (1) pre-hearing conference sessions x \$300.00 and six (6) sessions hearing sessions x \$4,500.00 less the \$750.00 = \$4,050.00.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant. Pursuant to Section 45 of the Code the NASD shall retain the \$350.00 member sur charge previously paid by the Respondent.

Additional forum fees in the amount of \$4,050.00 are assessed against both Claimants and Respondent equally. Therefore, Claimants shall pay \$2,025.00 and Respondent shall pay \$2,025.00 to the NASD.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

6/17/96  
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/s/ Robert R. Biglow

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Robert R. Biglow  
Presiding Chair  
Public Arbitrator

6/17/96  
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/s/ Wendy A. Sacha

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Wendy A. Sacha  
Public Arbitrator

6/28/96  
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/s/ Bruce Hebel

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Bruce Hebel  
Industry Arbitrator

Date of Service by the NASD: July 1, 1996