

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Peter M. Ferraro

96-00600

Name of Respondents

Jed Chmara
Greg R. Stuart
G. R. Stuart & Company

REPRESENTATION

Claimant Peter M. Ferraro ("Claimant") was represented by Richard W. Drury, Esq. and Alexander R. McMullen, Esq., McMullen, Drury & Pinder, Towson, MD.

Respondent Jed Chmara ("Chmara") was represented by Joseph P. Carmichael, Attorney at Law, Salem, MA.

Respondents Gregory R. Stuart ("Stuart") and G.R. Stuart ("Stuart & Co.") were represented by Gregory R. Stuart.

CASE INFORMATION

The Statement of Claim was filed on February 9, 1996.

Claimant's Answer to Chmara's Counterclaim was filed on November 5, 1996.

Claimant's Amended Statement of Claim was filed in August, 1996.

Claimant's Uniform Submission Agreement was signed on February 5, 1996.

The Statement of Answer of Chmara was filed on April 11, 1996.

Chmara's Answer to the Amended Statement of Claim and Chmara's Counterclaim were filed on November 4, 1996.

Chmara's Uniform Submission Agreement was signed on April 11, 1996.

Respondents Stuart and Stuart & Co. Joint Statement of Answer was filed on September 12, 1996.

Stuart and Stuart & Co. did not file Uniform Submission Agreements.

HEARING INFORMATION

Hearing Dates/Sessions: September 17, 1996/one session
 November 12, 1996/two sessions
 November 13, 1996/two sessions
 November 14, 1996/one session

Hearing Location: Doubletree Hotel
 Baltimore, MD

CASE SUMMARY

Claimant alleged, among other things, that Chmara and Stuart (collectively "Respondents") engaged in unauthorized trading and violated statutory duties enumerated in SEC Rule 15c2-6. Claimant alleged that prior to selling Claimant penny stocks, Respondents were under a duty to "reasonably determine...that transactions in [penny stocks] are suitable for the person, and that the person...has sufficient knowledge and experience in financial matters that the person...reasonably may be expected to be capable of evaluating the risks of transactions in [penny stocks.]" at paragraph (b)(2). Claimant alleged that prior to a purchase of the penny stocks by Respondents on behalf of Claimant, Respondents were required under 15c2-6(b)(3) to deliver to Claimant (a) a written statement as to the basis of Claimant's suitability to buying penny stocks; (b) a highlighted written statement prior to the purchase as to the illegality of selling penny stocks unless the broker or dealer has received a written agreement to the purchase; (c) a written statement that the broker or dealer is required to provide the Claimant with such statement and the Claimant should not sign the written statement to the broker or dealer if it does not accurately reflect the Claimant's financial situation, investment experiences and investment objectives; and (d) obtain a manually signed and dated copy of the written statements required above.

Claimant alleged that he received none of these protections prior to having Rich Coast and Medizone purchased on his behalf by Respondents. Claimant alleged that Respondents possessed policy and procedure manuals requiring such customer protection which were available and the Respondents knew of such requirements. Claimant alleged that he telephoned Respondents immediately upon learning of the unauthorized purchase of Medizone by Respondents and demanded reversal of the trade. Claimant alleged that he sent a contemporaneous follow-up letter to Mr. Murphy, an officer of Respondent G.R. Stuart.

Claimant denied the allegations of filing frivolous complaints as asserted in Chmara's counterclaim. Claimant maintained that the only issue is whether Respondents met their federally mandated duty to submit written confirmation or disclosure forms to Claimant to determine suitability to purchase penny stocks.

Claimant alleged that he never traded equities, let alone penny stocks, in his life. Claimant alleged that his account application with Respondents indicated "zero" history of trading stocks. Further, there is not exemption in the Penny Stock Reform Act lessening a broker or dealer's burden based upon whether the customer has a history of trading options and futures or a history of taking risk for that matter. Claimant alleged that Respondents owed Claimant an equitable and statutory duty to disclose sufficient information to Claimant to make an informed decision about whether to purchase the penny stocks. Claimant alleged that he was not presented with information necessary to make such decision in an informed manner, either orally or in written form.

Chmara denied all allegations of wrongdoing asserted by Claimant. Chmara maintained that Claimant contacted him in 1992 after Claimant saw an advertisement in the Futures Magazine. Chmara maintained that he and Claimant spoke frequently about current and past securities trading activities and experiences. Chmara maintained that at that time Claimant informed Chmara that Claimant was actively trading uncovered treasury bond options and futures at another brokerage firm. Chmara maintained that claimant spoke about Claimants extensive and varied experience in the securities and futures markets and that Claimant had lost a large sum of money but still wanted to trade as Claimant had learned from past mistakes. Chmara maintained that Claimant is an extremely sophisticated securities trader who has actively traded all types of securities. Chmara maintained that when Claimant first opened his account, Claimant traded only OEX options and that Chmara kept Claimant informed on a daily basis when Claimant had option position on. Chmara maintained that when Claimant conducted a trade, Chmara would give him a verbal confirmation followed by a printed confirmation from the firm as well as the monthly account statement.

Chmara maintained that Claimant was monitoring Chmara's option trading activity and made suggestions on a daily basis to determine if Chmara's style of trading would match Claimant's interests and goals. Chmara maintained that Claimant, in January 1993, asked Chmara to find a low-priced speculative stock idea. Chmara maintained that he presented Claimant with the idea of Rich Coast Resources which Claimant decided to invest in. Chmara maintained that in May 1993, as Claimant became frustrated with his Rich Coast position, he decided to investigate Medizone. Chmara maintained that he gave Claimant the telephone number of Medizone and Claimant informed Chmara that Claimant had made a call to Medizone and that he wished to sell Rich Coast and invest in Medizone. Chmara maintained that, at Claimant's request, Chmara purchased 30,000 shares of Medizone which Claimant closely monitored. Chmara maintained that in June 1993 a call was made to Claimant informing claimant that Medizone had risen to \$.65 and if he still wanted to make a quick profit, he should sell his position. Chmara maintained that Claimant refused and wished to hold out for a larger profit.

Chmara raised the affirmative defenses of failing to state a claim for which relief can be granted, ratification of all trades, waiver and/or estoppel.

Chmara alleged, in his counterclaim, that Claimant is a convicted felon with a long criminal history who makes a practice of filing complaints and claims against financial institutions to try to obtain settlements for nuisance value. Chmara alleged that Claimant engaged in fraudulent conduct.

Respondents Stuart and Stuart Co. denied all allegation of wrongdoing alleged by Claimant. Stuart and Stuart Co. maintained, among other things, that Chmara joined Stuart Co. after an asset purchase transaction of Chmara former brokerage firm Financial Securities Network, Inc. ("FSN") occurred on or about March 16, 1993. Stuart and Stuart Co. maintained that Claimant purchased Rich Coast while Claimant's account was at FSN and that they have no responsibility or liability for the purchases of Rich Coast. Stuart and Stuart Co. maintained that although Claimant purchased Medizone while Chmara was employed by Stuart Co., that Claimant never complained that Medizone was unauthorized, but that Claimant indicated his dissatisfaction with Medizone's stock performance.

RELIEF REQUESTED

Claimant requested either the loss from the purchase and sale of Rich Coast in the amount of \$8,029.00 and the repurchase of Medizone stocks in the amount of \$16,354.50 for total damages in the amount of \$24,383.50; or in the alternative, for the loss from the purchase and sale of Rich Coast in the amount of \$8,029.00 and the loss of the Medizone stocks in the amount of \$13,054.50, commissions of \$300.00 for total damages of \$21,383.50.

Claimant requested that Chmara's Counterclaim be denied.

Chmara requested that the Statement of Claim be dismissed and that the costs of this arbitration, including attorney's fees, be assessed to Claimant.

Chmara requested sanctions and damages in an amount the panel seems appropriate for the Counterclaim.

Respondents Stuart and Stuart Co. requested that all claims asserted against them be denied in their entirety.

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 originals remain on file with the NASD.

Several Motions were filed by the parties including Claimant's Motion for Sanctions and Motion to Bar, such motions were denied. The Panel heard the merits of the case, all parties were permitted to testify, the late answer of Respondents Stuart and Stuart Co. was accepted and no party or parties were sanctioned.

The Panel noted that pursuant to Rule 10301 of the NASD Regulation Code of Arbitration Procedure ("Code") Respondents Stuart and Stuart & Co. were required to submit to the Panel's jurisdiction. Notwithstanding, the failure of Respondent Stuart and Stuart Co. to execute Uniform Submission Agreements, they are bound by the Panel's rulings and determinations that follow.

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 Statement of Claim is denied in its entirety.
2. That the Counterclaim is denied in its entirety.
3. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of Forum Fees as discussed below.
4. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332 of the Code, the following Forum Fees are assessed:

6 sessions X \$400 = \$2,400

Forum fees are assessed at \$1,200.00 to Claimant and \$1,200.00 to Respondents Chmara, Stuart and Stuart Co. jointly and severally. Claimant is to receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment for Claimant of \$800.00. Respondents jointly and severally, have a net assessment due of \$1,200.00

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

Date Award Signed

1-10-97

Concurring Arbitrators' Signatures



Marvin Elster, Esq., Chairperson
Public Arbitrator

Alan S. Carmel, Panelist
Public Arbitrator

Alexander I. Heckman, Esq., Panelist
Industry Arbitrator


Date Award served by NASD Regulation: January 15, 1997

Date Award Signed

Concurring Arbitrators' Signatures

Marvin Elster, Esq., Chairperson
Public Arbitrator

1/13/97



Alan S. Carmel, Panelist
Public Arbitrator

Alexander I. Heckman, Esq., Panelist
Industry Arbitrator

Date Award served by NASD Regulation: January 15, 1997

Date Award Signed

Concurring Arbitrators' Signatures

Marvin Elster, Esq., Chairperson
Public Arbitrator

Alan S. Carmel, Panelist
Public Arbitrator

1/15/97

Alexander I. Heckman, Esq., Panelist
Industry Arbitrator

Date Award served by NASD Regulation:

January 15, 1997