

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Bennett Schwartz

96-00859

Name of Respondent

Stuart, Coleman & Co., Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 26, 1996, Claimant Bennett Schwartz ("Claimant"), who appeared Pro Se, alleged that Respondent Stuart, Coleman & Co., Inc. ("Respondent"), through its agent Ms. Janet Fleischman, conducted harassing solicitation calls to his home as well as his office. Claimant further alleged that Ms. Fleischman's calls increased in volume over time until he was overcome by the harassing calls. Claimant also alleged that he succumbed to her calls, while he was busy, and purchased 5000 shares of Calton for his Individual Retirement Account ("IRA"). Claimant contended that the Calton purchase was done against his investment objectives. Claimant asserted that Ms. Fleischman never communicated to him that the company had been in bankruptcy and was operating under a plan of reorganization since 1993, an issue he learned of upon receiving its first quarterly report. Claimant further asserted that he called the broker who replaced Ms. Fleischman and was informed that such problems were common to Fleischman's accounts. Claimant contended that as a result of the above, he has suffered damages for which the Respondents should be held liable.

Respondent Stuart, Coleman & Co., Inc. ("Respondent"), through its representative and in-house counsel, Victor T. Sicuranza, Esq., maintained that the stock transaction was clearly consistent with Claimant's objectives, which allowed for speculative stock trades. Respondent further maintained that Claimant had knowledge of the fact that the company had come out of bankruptcy because Ms. Fleischman initially informed him, and continued to do so on numerous occasions, by sending him articles and announcements. Respondent contended that although Ms. Fleischman did try to reach him on many occasions, Claimant never specifically told her that

her calls were unwanted. Respondent further contended that Claimant was not pressured to buy because if that had been the case, he would have immediately called back once he had time to reflect on the investment and would not have waited nine months to complain. Respondent maintained that Ms. Fleischman's replacement denied saying that he inherited problems with her accounts. Respondent denied any wrongdoing and asserted that it should not be liable.

In a Response to the Answer of Respondent Stuart, Coleman & Co., Inc., Claimant alleged that he never saw the information nor signed the new account form which stated his objectives. Claimant further alleged that the information on the new account form was inaccurate, which is evidenced by his rejection of Ms. Fleischman's pursuit to have him buy the Ames stock because it was highly speculative.

### **RELIEF REQUESTED**

Claimant Bennett Schwartz requested \$9,528.01 in actual damages.

Respondent Stuart, Coleman & Co., Inc. requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Andrew Berger, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Bennett Schwartz on February 24, 1996 and by the Respondent Stuart, Coleman & Co., Inc. on April 11, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Bennett Schwartz against Respondent Stuart, Coleman & Co., Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **ANDREW BERGER**, do hereby swear or 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 black ink, appearing to read 'A. Berger', is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION:

September 6, 1996