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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

John H. Sparkman, Esq.

Claimant,

v.

No. 96-01308

* M. Rimson & Co., Inc.,
and Elliot Fishman,

Respondents.

REPRESENTATION OF PARTIES

Claimant John H. Sparkman, Esq. was represented pro se.

Respondent M. Rimson & Co., Inc. was not represented in any pleadings or at the hearing in this matter.

Respondent Elliot Fishman was not represented in any pleadings or at the hearing in this matter.

CASE INFORMATION

Claimant John H. Sparkman, Esq. 's Statement of Claim was filed on or about March 25, 1996.

Claimant John H. Sparkman, Esq. 's Submission Agreement was signed on March 20, 1996.

Respondent M. Rimson & Co., Inc. did not submit a Statement of Answer, or a signed submission to arbitration.

Respondent Elliot Fishman did not submit a Statement of Answer, or a signed submission to arbitration.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on October 31, 1996, for one (1) session.

The hearing was held in Oklahoma City, Oklahoma.

CASE SUMMARY

Claimant John M. Sparkman, Esq. ("Claimant") alleged that Respondents M. Rimson & Co., Inc. and Elliot Fishman ("Respondents") made an unauthorized trade and committed conversion. Claimant asserted that on or about October 27, 1993, Respondents purchased 4,000 shares of World Entertainment Concept, Inc. on his account, which he never authorized, directed, or ratified. Claimant further asserted that on or about October 14, 1993, he instructed his agent at another securities firm to sell 1,000 shares of Western Micro Technology, Inc. on his account, with a settlement date of October 21, 1993, and instructions to remit the proceeds of the sale directly to him. Instead, according to Claimant, the proceeds were transferred to Respondents, and he has repeatedly requested that the proceeds of this sale in the amount of \$10,500.00 be delivered to him, but Respondents have not complied with these requests. Claimant made the following legal claims: breach of contract; breach of fiduciary duty; violation of federal securities laws and the NYSE and NASD Rules of Commercial Conduct; and conversion.

RELIEF REQUESTED

Claimant John M. Sparkman requested: an order requiring Respondents M. Rimson & Co., Inc. and Elliot Fishman to cease and desist from conducting any further transactions in his account; an order requiring the rescission of the October 27, 1993 unauthorized purchase; an award for all sums and costs associated with the unauthorized trade; an award in the amount of \$10,000 for the conversion of funds due from the sale of stock; an award for punitive damages; and an award for legal fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that respondents M. Rimson & Co., Inc. and Elliot Fishman have been properly served with the Statement of Claim and with notice of the arbitrators pursuant to Sections 10308 and 10310 of the Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents M. Rimson & Co., Inc. and Elliot Fishman had received due notice of the hearing as required under Section 10315 of the Code and that arbitration of the matter would proceed pursuant to Section 10318 of the Code.

Respondent M. Rimson & Co., Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

Respondent Elliot Fishman did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to

Section 10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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 Respondents M. Rimson & Co., Inc. and Elliot Fishman are hereby, jointly and severally, liable for and shall pay Claimant John H. Sparkman, Esq. the sum of \$10,490.00 in compensatory damages;
2. That Respondents M. Rimson & Co., Inc. and Elliot Fishman are hereby, jointly and severally, liable for and shall pay Claimant John H. Sparkman, Esq. the amount of \$760.00 for costs associated with the arbitration of this matter;
3. That Respondents M. Rimson & Co., Inc. and Elliot Fishman are hereby, jointly and severally, liable for and shall pay Claimant John H. Sparkman, Esq. the sum of \$22,500.00 for punitive damages pursuant to Oklahoma law. In deciding to award punitive damage;, the arbitrators considered the pleadings, the evidence and the testimony presented as well as the laws of the State of Oklahoma; and
4. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400.00 per hearing session. There was one (1) hearing sessions x \$400.00 = \$400.00 in forum fees. Pursuant to Section 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant John H. Sparkman, Esq.

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Respondents M. Rimson & Co., Inc. and Elliot Fishman are hereby, jointly and severally, liable for and shall reimburse Claimant John H. Sparkman, Esq. the amount of \$400.00 for the hearing session deposit.

Signed:

Dated:

Kelley L. Cornelius, Esq.
Kelley L. Cornelius, Esq.
Public Arbitrator, Presiding Chair

December 19, 1996 -

Jerry Cord Wilson, Esq.
Jerry Cord Wilson, Esq.
Public Arbitrator

December 4, 1996 -

Carolyn Anne Messler
Carolyn Anne Messler
Industry Arbitrator

December 16, 1996 -

Date served by the NASD Regulation, Inc.: December 19, 1996