

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James C. and Jayne L. Stuart

96-03297
96-03044
96-03360
96-01743
96-03369

Name of Respondents

John A. Stanley
Newby & Company

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on April 22, 1996, claimants James and Jayne Stuart ("claimants"), who appeared Pro Se, alleged that respondents John Stanley ("Stanley") and Newby & Company ("Newby") made unsuitable and unauthorized trades in their account. Claimants further alleged that in January 1992, they opened a discretionary account with Stanley because he told them that it was the only way he would handle their account. Claimants also alleged that Newby charged markups rather than commissions, because Newby usually made the market in all the securities they sold. Claimants asserted that on February 19, 1992 Stanley purchased 700 shares of Nview Corp. at \$14.75. Claimants further asserted that Stanley engaged in the practice of averaging down because he had previously made a purchase of Nview at a higher price. Claimants also asserted that Stanley underdiversified his portfolio by putting over 30% of his portfolio in just one company. Claimants contended that Stanley allowed his losses to run over 50%. Claimants further contended that after they received the monthly statements of the sale, Mr. Stuart asked Stanley what was going on. Claimants also contended Stanley told them that the reason the stock went down was because the president of Nview had lied about the company's sales and earnings, but that they would get their money back because there was going to be a class action suit against the president of Nview. Claimants alleged that on April 9, 1996, Mr. Stuart called Stanley to find out about the class action suit, and Stanley replied that a Virginia court had dismissed the case. Claimants further alleged that when he asked Stanley about the plans to redress his account, Stanley replied that their account would not be redressed.

Claimants also alleged that Stanley did not have written permission from them to have a discretionary account. Claimants asserted that Stanley never called them to get approval to buy and sell securities in their accounts. Claimants further asserted that all of the shares bought and sold in their account were for the benefit of Stanley. Claimants also asserted that Stanley purchased and sold 1,200 shares of Galileo Electro Optics ("Galileo") without their authorization. Claimants contended that Stanley purchased 1,000 shares of Biovascular and 700 shares of Survival Technology without their authorization. Claimants further contended that Stanley purchased 1,000 shares of Zitel without their authorization.

Respondent Stanley, who appeared Pro Se, maintained that it is hard to respond to claimant's allegations because they merely second guessed decisions that were made four years ago. Respondent Stanley further maintained Mr. Stuart purchased 500 shares of NVUE on February 5, 1992 at a price of 21 1/2. Page

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Respondent Stanley also maintained that Mr. Stuart then purchased 700 shares of NVUE on February 7, 1992, at \$14 3/4. Respondent Stanley contended that when asked about the decline in NVUE stock, he informed Mr. Stuart that management credibility issues had been raised and that a class action suit had been filed. Respondent Stanley also contended that in October of 1993, claimants transferred their account, which had appreciated 20% out of Newby. Respondent Stanley maintained that when Mr. Stuart asked him to be reimbursed, he thought he was joking, but informed him that reimbursing would be in violation of NASD and SEC Regulations.

Respondent Newby, through its representative and President Steven Newby, maintained Mr. Stuart did not have a discretionary account at Newby. Respondent Newby further maintained that it has never had a discretionary account in the history of the firm. Respondent Newby also maintained that Mr. Stuart approved both the buy and sell transaction prior to their execution. Respondent Newby contended Mr. Stuart had a profitable account at Newby. Respondent Newby further contended that Mr. Stuart does not assert nor did it commit any rule violations. Respondent Newby also contended Mr. Stuart is expecting it to guarantee him against loss which it would not and are legally prevented from doing. Respondent Newby maintained that it has an unblemished record in their relationship with customers.

RELIEF REQUESTED

Claimants James and Jayne Stuart in their first claim requested (1) \$5469.00 for loss of principle; (2) \$500.00 in lost interest; (3) \$75.00 for hearing session deposit; (4) \$2,000.00 in punitive damages; (5) plus coverage of any additional fees the respondents may try to impose.

Claimants James and Jayne Stuart in their second claim requested (1) \$7,281.50 for loss of principle; (2) \$75.00 for hearing session fees; (3) \$2,643.50 in punitive damages; (4) 5% simple interest on the loss of principle and punitive damages from February 5, 1992 to July 5, 1996; (5) plus coverage of any additional fees the respondents may try to impose.

Claimants James and Jayne Stuart in their third claim requested (1) \$4,350.00 for losses suffered due to the unauthorized purchasing of Galileo; (2) \$75.00 for hearing sessions deposit; (3) \$5,575.00 in punitive damages; (4) 5% simple interest on the loss of principle and punitive damages form February 10, 1993 to July 10, 1996; (5) plus coverage of any additional fees the respondents may try to impose.

Respondent Stanley requested that the claims of claimant be dismissed in their entirety.

Claimants James and Jayne Stuart in their four claim requested (1) \$3,600.00 for losses suffered due to the unauthorized purchasing of Biovascular and Survival technology; (2) \$75.00 for hearing sessions deposits; (3) \$6,325.00 in punitive damages; (4) 5% simple interest for the loss of principle and punitive damages form January 6, 1992 to July 6, 1996; (5) plus coverage of any additional fees the respondents may try to impose.

Claimant James and Jayne Stuart in their fifth claim requested (1) \$3,125.00 for losses suffered due to the unauthorized purchasing of Zitel; (2) \$75.00 for hearing sessions deposit; (3) \$6,800.00 in punitive damages; (4) 5% simple interest for the loss of principle and punitive damages form January 9, 1992 to July 9, 1996; (5) plus coverage of any additional fees the respondents may try to impose.

Respondent Stanley requested that the claims of claimant be dismissed in their entirety.

Respondent Newby requested that the claims of claimant be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator had reviewed and considered all submissions regarding respondent's Motion of Consolidate the above captioned cases, the motion was granted. The damages for these cases were not aggregated; therefore, the cases were processed in accordance with Section 10302 of the Code of Arbitration Procedure.

AWARD

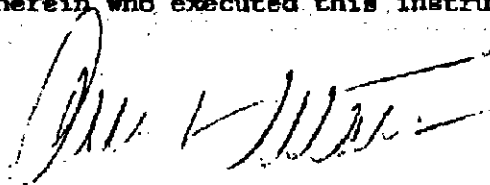
Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Albert S. Watkins, Esq., was selected to review the matter in controversy between the parties set forth in submissions to arbitration signed by claimants James and Jayne Stuart on April 15, 1996 and by respondents John Stanley on May 31, 1996 and Newby & Company on May 31, 1996 as required by Sections 10301 and 10302 of the Code of Arbitration Procedure.

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 claimants James and Jayne Stuart against respondents Stanley and Newby & Company are dismissed in their entirety.
2. All other relief requests are denied.
3. National Association of Securities Dealers Regulation, Inc. shall retain the \$150.00 filing fee which was deposited by the claimant on each of the above-referenced claims.

AFFIRMATION

I, Albert S. Watkins, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Albert Shawe Watkins, Esq.

Date of Decision: March 6, 1997