

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Richard A. Swanson

and

96-04864

Name of Respondent

Robert Thomas Securities, Inc.
James Steinkirchner

REPRESENTATION OF PARTIES

Richard A. Swanson ("Claimant") was represented by Robert R. Nardi, Esq., Willeke & Daniels, Minneapolis, Minnesota.

Robert Thomas Securities, Inc. ("Respondent Robert Thomas") and James Steinkirchner ("Respondent Steinkirchner") were represented by Joseph W. Anthony, Esq. and Steven Phillips, Esq., Fruth & Anthony, P.A., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about November 1, 1996. Answer to the Counterclaim was filed on or about January 27, 1997. Submission Agreement of Claimant Richard A. Swanson was signed on October 23, 1996.

Statement of Answer and Counterclaim was filed by Respondents Robert Thomas Securities, Inc. and James Steinkirchner on or about January 9, 1997. Submission Agreement of Respondent Robert Thomas Securities, Inc. was signed on January 3, 1997 by Paul Matecki. Submission Agreement of Respondent James Steinkirchner was signed on February 10, 1997.

HEARING INFORMATION

A pre-hearing conference was held on Tuesday, September 16, 1997 for one (1) session, Kevin Keenan, Esq., presiding. The hearing was held on Thursday, September 18, 1997 for two (2) sessions and Friday, September 19, 1997 for one (1) session in Minneapolis, Minnesota for a total of one (1) pre-hearing and three (3) regular hearing sessions.

CASE SUMMARY

Claimant alleged that Respondent Steinkirchner solicited his participation in the initial public offering of General Magic, Inc. It was alleged that in soliciting the Claimant's participation, Respondent Steinkirchner proposed a specific plan. The alleged plan was for Claimant to commit to invest a total of \$60,000, of which \$30,000 was to be used to purchase shares as soon as the market opened on February 10, 1996, and, if the stock kept rising in price during the day, no more stock would be purchased and, at the end of the day, the original shares purchased would be sold. Claimant further alleged that in the event that the price of the stock dropped within hours of the initial purchase, the remaining \$30,000 would be used to purchase additional shares at lower prices. Claimant stated that Respondent Steinkirchner did not follow the plan, instead purchasing a total of \$54,400 worth of General Magic, Inc. stock at the opening of the market and failed to sell any of the stock at the end of the day..

Respondents deny each and every allegation made by Claimant. Respondents maintained that Claimant was a sophisticated, competent and knowledgeable investor. Respondents contended that Claimant agreed to purchase \$30,000 of General Magic, Inc. common stock. Respondents further contended that after erroneously purchasing \$54,400 of General Magic, Inc. common stock for Claimant, respondent Steinkirchner spoke with Claimant and brought the error to Claimant's attention, and Claimant did not request that the transaction be reversed. Respondents maintain that two weeks thereafter, after the settlement date for the transaction had passed and after the price of the stock continued to fall, Claimant first claimed that he would like to reverse the stock purchase transaction. Respondent Robert Thomas Securities, Inc. subsequently reversed that portion of the stock purchase that exceeded the \$30,000 investment agreed to by Claimant, but maintained that it had no obligation to reverse the remaining portion of the purchase as Claimant had agreed to that purchase.

Respondent Robert Thomas Securities, Inc. asserted a Counterclaim against Claimant in which it sought to recover a deficit balance in Claimant's account in the amount of \$3,014.32.

RELIEF REQUESTED

Claimant requested that the entire transaction be reversed and that he be awarded \$18,608 (the cash balance that was in Claimant's account prior to the transaction) plus accrued interest from February 10, 1996 and \$4,678.25 plus accrued interest from September 25, 1996, which amount represents the proceeds Respondent Robert Thomas Securities, Inc. received from the liquidation of 350 shares of Claimant's Boston Technology, Inc. stock on September 25, 1996. Claimant further requested that Respondent Robert Thomas

Securities, Inc.'s and Respondent James Steinkirchner's Counterclaim be denied and that Respondent Steinkirchner's request that the Claimant's Statement of Claim be expunged from the records of the National Association of Securities Dealers also be denied.

Respondents requested judgment dismissing the Statement of Claim, with prejudice, and awarding Respondents their costs and disbursements, including attorneys fees, together with such other and further relief as the panel may deem just and appropriate. Respondent Steinkirchner requested that the panel order that Claimant's Statement of Claim be expunged from the records of the National Association of Securities Dealers, Inc. which relate to Respondent Steinkirchner. Respondent Robert Thomas Securities, Inc. requested an award of \$3,014.32 on its Counterclaim, together with the attorneys fees and costs incurred in collecting on the deficit balance in Claimant's account.

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 original(s) remain on file with the 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. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. The counterclaims asserted in this matter shall be and hereby are dismissed in their entirety.
3. The request for an Order of Expungement is hereby denied.
4. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$300 and were three (3) sessions x \$400 = \$1,500 in

forum fees. Pursuant to Rule 10332(b) 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 Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Richard A. Swanson. Claimant Richard A. Swanson shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$350 for forum fees.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent Robert Thomas Securities, Inc. Respondent Robert Thomas Securities, Inc. and James Steinkirchner shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$450 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Kevin Keenan, Esq.

September 29, 1997

Kevin Keenan, Esq.
Public Arbitrator, Presiding Chair

/s/ D. Randall Blohm, Esq.

September 29, 1997

D. Randall Blohm, Esq.
Public Arbitrator

/s/ James Nyquist

September 29, 1997

James Nyquist
Industry Arbitrator