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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gregory R. Anderson

and

97-00176

Name of Respondent

R. J. Steichen & Co.

REPRESENTATION OF PARTIES

Gregory R. Anderson ("Claimant") was represented by Alain M. Baudry, Esq. and Richard G. Wilson, Esq., Maslon Edelman Borman & Brand, Minneapolis, Minnesota.

R. J. Steichen & Co. ("Respondent") was represented by Vincent D. Louwagie, Esq., Fruth & Anthony, Minneapolis, Minnesota and F. Chet Taylor, Esq., R. J. Steichen and Company, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about January 8, 1997. Claimant's Reply to Respondent's Counterclaim was filed on or about April 23, 1997. Submission Agreement of Claimant Gregory R. Anderson was signed on January 2, 1997.

Statement of Answer and Counterclaim was filed by Respondent R. J. Steichen & Co. on or about March 14, 1997. Submission Agreement of Respondent R. J. Steichen & Co. was signed on March 13, 1997 by F. Chet Taylor.

HEARING INFORMATION

A pre-hearing conference was held on October 30, 1997 with Casandra Mihalchick, Esq., presiding. The hearing was held on Thursday, November 13, 1997 for two (2) sessions and Friday, November 14, 1997 for two (2) sessions in Minneapolis, Minnesota for a total of one (1) pre-hearing and four (4) hearing sessions.

CASE SUMMARY

Claimant alleged that in October, 1994, Respondent Steichen, through Scott Rude solicited him to purchase equity securities issued by Omni International Trading, Inc. ("Omni"). Specifically, Claimant alleged that Respondent Steichen represented that the securities were an exceptional investment opportunity because the company was engaged in a "going private" transaction. It was alleged that Respondent Steichen assured Claimant that purchasers were guaranteed a 175% return on their investment. Claimant alleged that in connection with the solicitation to purchase shares of Omni Respondent Steichen omitted to disclose material facts including but not limited to the following:

- ▶ the Omni stock sold to Claimant was not registered for sale in the State of Minnesota;
- ▶ Omni, f/k/a O-Jay, Inc. f/k/a Action Card Express, Inc. Had filed a Bankruptcy Petition in or about 1989;
- ▶ neither Omni, O-Jay nor Action had issued financial statements after the fiscal year ended March 31, 1992;
- ▶ the last set of financial statements issued by Omni, then known as O-Jay, reported that the company had a loss of \$1,995,518 for the year ended March 31, 1992, had an accumulated deficit of \$4,896,705, and were issued subject to a going concern qualification given by the company's auditor;
- ▶ Omni had failed to file its annual report with the Minnesota Commissioner of Commerce and its authorization to sell stock had been withdrawn;
- ▶ Omni was paying extraordinary commissions to induce Steichen registered representatives to sell Omni securities;
- ▶ Omni did not have a binding loan commitment from a qualified lender to fund the supposed going private transaction; and
- ▶ Omni had not obtained the required regulatory approval to effect the going private transaction.

Claimant alleged that the actions of respondent Steichen constituted violations of Minnesota Business Corporation Act and misrepresentation.

Respondent denied each and every allegation made by Claimant and argued that it was not liable for the acts of its registered representative outside the scope of his agency with Respondent.

RELIEF REQUESTED

Claimant requested that the arbitrators grant him the following relief:

- ▶ rescission of all of the securities transactions described herein, and directing Steichen to deliver to him the sum of \$390,000, plus interest at the legal rate thereon, costs and reasonable attorneys' fees.
- ▶ in the alternative, awarding him damages in an amount to be proven at trial in excess of \$50,000, plus interest at the legal rate thereon, costs and reasonable attorneys' fees.
- ▶ awarding him punitive damages in such amount as the arbitrators deem just and equitable.
- ▶ awarding him his costs, disbursements and attorneys' fees herein.
- ▶ awarding him such other, further or different relief as the Arbitrators deem just and equitable.

Claimant also requested that the counterclaim asserted against him be dismissed and that he be awarded all of the relief requested in his demand for arbitration.

Respondent requested that the arbitration panel enter an award as follows:

- ▶ denying Claimant's claim in its entirety.
- ▶ awarding it its attorneys' fees and costs incurred in this arbitration in an amount to be proved at the arbitration hearing.
- ▶ awarding such other relief as the panel may deem to be just and equitable.

Prior to the hearing Respondent voluntarily dismissed its Counterclaim.

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. All claims asserted against Respondent R.J. Steichen shall be and hereby are dismissed in their entirety. Therefore all requests for damages, interest and attorneys' fees are denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) session x \$300 and four (4) sessions x \$750 = \$3,300 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (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 Rule 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Gregory R. Anderson. Claimant Gregory R. Anderson shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$900 as forum fees.

Pursuant to Rule 10332(c) of the Code, 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 \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent R.J. Steichen. Respondent R.J. Steichen shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$900 as the balance due for forum fees. Respondent R.J. Steichen has on deposit with the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,000 which will be applied to forum fees leaving a balance of \$100 to be refunded. The NASD Regulation, Inc. Office of Dispute Resolution shall apply the postponement fees in the amount of \$750 previously deposited by Respondent R.J. Steichen to the forum fees due from Respondent R.J. Steichen.

Pursuant to Rule 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Casandra Mihalchick
Casandra Mihalchick, Esq.
Public Arbitrator, Presiding Chair

Dated: November 25, 1997

/s/ Sandra L. Shearer
Sandra L. Shearer
Public Arbitrator

November 26, 1997

/s/ Robert L. Schnell, Jr.
Robert L. Schnell, Jr., Esq.
Industry Arbitrator

December 17, 1997