

Award
NASD Dispute Resolution, Inc.

BINDER COPY

In the Matter of the Arbitration Between:

Fred S. Cook, Judith Payne Cook, Carmen Margala, Neil Harlacher, Sandra Harlacher, and Marilyn Sherman, Claimants v. All-Tech Investment Group, Inc., Barry Parish, Southwest Securities, Inc. Mark D. Shefts, and Harvey I. Houtkin, Respondents

Case Number: 99-02325

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimants:

Dennis R. Villaviciencio, Esq.
Attorney at Law
Carlsbad, California

Ronald A. Marron, Esq.
Law Offices of Ronald A.
Marron
San Diego, California

For Respondents All-Tech Investment Group, Inc.,
Mark D. Shefts, and Harvey I. Houtkin:

Terry Ross, Esq.
Keesal, Young & Logan
Long Beach, California

For Respondent Barry Parish:

John J. Ambrose, Jr., Esq.
Law Offices of John J.
Ambrose, Jr.
San Diego, California

For Respondent Southwest Securities, Inc.:

Will S. Montgomery, Esq.
Jenkins & Gilchrist
Dallas, Texas

CASE INFORMATION

Statement of Claim filed: May 17, 1999

Amended Statement of Claim filed: December 28, 1999

Claimant Fred S. Cook's Uniform Submission Agreement filed: May 20, 1999

Claimant Judith Payne Cook's Uniform Submission Agreement filed: May 20, 1999

Claimant Carmen Margala's Uniform Submission Agreement filed: December 13, 1999

Claimant Neil Harlacher's Uniform Submission Agreement filed: September 20, 1999

Claimant Sandra Harlacher's Uniform Submission Agreement filed: September 20, 1999

Claimant Marilyn Sherman's Uniform Submission Agreement filed: September 20, 1999

Joint Statement of Answer filed by Respondents All-Tech Investment Group, Inc., Barry Parish, Mark D. Shefts, and Harvey I. Houtkin: July 20, 1999

Statement of Answer filed by Respondent Southwest Securities, Inc.: July 12, 1999

Joint Statement of Answer to Amended Statement of Claim filed by Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin: February 11, 2000

Statement of Answer to Amended Statement of Claim filed by Respondent Barry Parish: February 28, 2000

Statement of Answer to Amended Statement of Claim filed by Respondent Southwest Securities, Inc.: March 21, 2001

Respondent All-Tech Investment Group, Inc.'s Uniform Submission Agreement signed: July 27, 1999

Respondent Barry Parish's Uniform Submission Agreement signed: July 20, 1999

Respondent Southwest Securities, Inc.'s Uniform Submission Agreement filed: December 9, 1999

Respondent Mark D. Shefts' Uniform Submission Agreement signed: July 22, 1999

CASE SUMMARY

In their Amended Statement of Claim, Claimants alleged the following causes of action: breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, conspiracy to commit fraud, conspiracy to commit common law fraud, constructive fraud, negligent misrepresentation, violation of federal securities law, professional negligence, malpractice.

violation of California securities law, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of written contract, and violation of the California Civil Code and the California Business and Professions Code.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

In their Amended Statement of Claim, Claimants requested \$400,000.00 in compensatory damages, unspecified punitive damages, interest, return of commissions, and mental anguish and suffering damages. Claimants also sought reimbursement for attorney's fees and arbitration costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and sought reimbursement for attorney's fees and arbitration costs.

OTHER ISSUES CONSIDERED AND DECIDED

On February 14, 2001, NASD Dispute Resolution, Inc. received notification that Claimants dismissed with prejudice their claims against Southwest Securities, Inc.

Respondent Harvey I. Houtkin did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimants Fred S. Cook and Judith Payne Cook \$102,000.00 in compensatory damages.

- 2) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimant Carmen Margala \$45,880.00 in compensatory damages.
- 3) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimants Neil Harlacher and Sandra Harlacher \$83,000.00 in compensatory damages.
- 4) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimant Marilyn Sherman \$46,839.00 in compensatory damages.
- 5) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimants Fred S. Cook and Judith Payne Cook \$13,781.00 in interest.
- 6) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimant Carmen Margala \$6,684.00 in interest.
- 7) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimants Neil Harlacher and Sandra Harlacher \$16,609.00 in interest.
- 8) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimant Marilyn Sherman \$4,707.00 in interest.
- 9) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimants Fred S. Cook, Judith Payne Cook, Carmen Margala, Neil Harlacher, Sandra Harlacher, and Marilyn Sherman \$ 124,150.00 in attorney's fees pursuant to the authorities cited in Claimants' post-hearing brief.
- 10) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimants Fred S. Cook, Judith Payne Cook, Carmen Margala, Neil Harlacher, Sandra Harlacher, and Marilyn Sherman \$12,769.00 in arbitration costs.
- 11) Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are jointly and severally liable to and shall pay Claimants Fred S. Cook, Judith Payne Cook, Carmen Margala, Neil Harlacher, Sandra Harlacher, and Marilyn Sherman \$300.00 for reimbursement of the filing fee.
- 12) Respondent Barry Parish is dismissed with prejudice.

- 13) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Barry Parish's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Barry Parish must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 14) Claimants' request for punitive damages is denied.
- 15) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 16) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy.

The member firm All-Tech Investment Group, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

The member firm Southwest Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, December 4, 2000 – December 20, 2000
adjournment requested by Claimants = \$ 1,125.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00
Pre-hearing conference: October 18, 2000 1 session

4 Pre-hearing conference sessions with the Panel @ \$ 1,125.00/session = \$ 4,500.00
Pre-hearing conferences: March 9, 2000 1 session
March 16, 2000 1 session
May 30, 2000 1 session
November 21, 2000 1 session

11 Hearing sessions @ \$ 1,125.00/session = \$ 12,375.00
Hearings: June 28, 2001 2 sessions
June 29, 2001 2 sessions
July 9, 2001 2 sessions
July 10, 2001 2 sessions
July 11, 2001 1 session
July 12, 2001 2 sessions

Total Forum Fees = \$ 17,325.00

1. The Panel assessed \$ 15,075.00 of the forum fees jointly and severally to Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin.
2. The Panel assessed \$1,125.00 of the forum fees to Respondent Barry Parish.
3. The Panel waived \$1,125.00 of the forum fee for the November 21, 2000 pre-hearing conference.

Fee Summary

1. Claimants Fred S. Cook, Judith Payne Cook, Carmen Margala, Neil Harlacher, Sandra Harlacher, and Marilyn Sherman are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= \$ 1,125.00
Total Fees	= \$ 1,425.00
<u>Less payments</u>	= \$ (2,550.00)
Refund Due Claimants	= \$ (1,125.00)

2. Respondent All-Tech Investment Group, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less Payment</u>	= \$ (2,100.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,500.00

3. Respondent Southwest Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ (15,850.00)
Refund Due Southwest Securities, Inc.	= \$ (11,250.00)

4. Respondent Barry Parish is charged with the following fees and costs:

<u>Forum Fees</u>	= \$ 1,125.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,125.00

5. Respondents All-Tech Investment Group, Inc., Mark D. Shefts, and Harvey I. Houtkin are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$ 15,075.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 15,075.00

All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert Rosen	-	Public, Presiding Chair
Thomas E. Gniatkowski, Esq.	-	Public Arbitrator
James C. Abel, Jr.	-	Non-Public Arbitrator

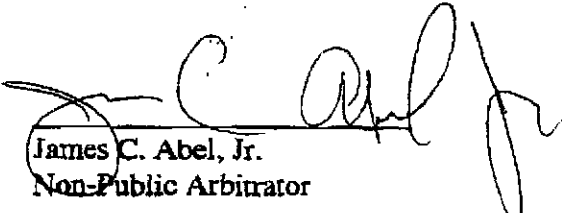
Concurring Arbitrators' Signatures

Robert Rosen
Chair, Public Arbitrator

Signature Date

Thomas E. Gniatkowski, Esq.
Public Arbitrator

Signature Date



James C. Abel, Jr.
Non-Public Arbitrator

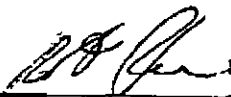
7/31/01
Signature Date

8/1/01
Date of Service

ARBITRATION PANEL

Robert Rosen	-	Public, Presiding Chair
Thomas E. Gniatkowski, Esq.	-	Public Arbitrator
James C. Abel, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert Rosen
Chair, Public Arbitrator

7/27/01

Signature Date

Thomas E. Gniatkowski, Esq.
Public Arbitrator

Signature Date

James C. Abel, Jr.
Non-Public Arbitrator

Signature Date

8/1/01

Date of Service


ARBITRATION PANEL

Robert Rosen	-	Public, Presiding Chair
Thomas E. Gniatkowski, Esq.	-	Public Arbitrator
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Concurring Arbitrators' Signatures

Robert Rosen
Chair, Public Arbitrator

Signature Date


Thomas E. Gniatkowski, Esq.
Public Arbitrator

8/1/01
Signature Date

James C. Abel, Jr.
Non-Public Arbitrator

Signature Date

8/1/01
Date of Service