

IN THE CIRCUIT COURT OF THE 19TH
JUDICIAL CIRCUIT, IN AND FOR
MARTIN COUNTY, FLORIDA

CASE NO. 88-94-CA
ASSIGNED JUDGE: *Cianca*

NORMAN E. MURPHY,

Plaintiff,

vs.

STEINBERG & LYMAN, a New
York corporation, and MANUEL
P. ASENSIO, individually,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, NORMAN E. MURPHY, by and through his undersigned counsel, and sues the Defendants, STEINBERG & LYMAN, a New York corporation, (hereinafter referred to as STEINBERG & LYMAN), and MANUEL P. ASENSIO, (hereinafter referred to as ASENSIO), its authorized representative, agent or employee, and as grounds therefor alleges:

AS TO ALL COUNTS

1. This is an action for damages that exceed Five Thousand Dollars (\$5,000.00), exclusive of interest, costs and attorneys' fees.

2. The Plaintiff, NORMAN E. MURPHY, is a natural person who resides in Palm Beach County, Florida.

3. The Defendant, STEINBERG & LYMAN, is a New York corporation regularly engaged in the business of investment banking and stock broker trading with its principal place of business in New York, New York.

4. MANUEL P. ASENSIO, is a natural person who is employed by STEINBERG & LYMAN as a Senior Vice President and, at all times material hereto and with respect to all allegations herein, was acting as an authorized representative, agent or employee of STEINBERG & LYMAN.

ROTH, BODKO
& McKEE, P.A.
ATTORNEYS AT LAW
2811 E. OCEAN BLVD
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SEASIDE, FL 32080-0409
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5. The Plaintiff has retained the undersigned law firm to represent him in this matter and has agreed to pay them a reasonable fee for their services.

6. The Plaintiff requests a trial by jury as to all issues so triable.

7. At all times material hereto and by virtue of the facts alleged herein, the Defendant, STEINBERG & LYMAN, was operating, conducting, engaging in or carrying on a business or business venture in this State and/or caused injury to the Plaintiff within this State arising out of an act or omission by the Defendants outside this State and, at or about the time of the injury to the Plaintiff, the Defendants were engaged in solicitation or service activities within this state and/or breached a contract in this State by failing to perform acts required by the contract to be performed in this State. Further, at all times material hereto, the Defendants were engaged in substantial and unisolated business activity within this State as more fully set forth herein.

8. On or about October 15, 1967, the Plaintiff contacted the Defendants for the purpose of retaining the Defendants to sell twenty thousand (20,000) purchase warrants that the Plaintiff owned in SCI Holdings, Inc. The Defendant, STEINBERG & LYMAN, acting by and through AGENSIO, its authorized representative, agent or employee, held itself out to the Plaintiff as a professional investment banking and stock brokerage firm with the ability and professional expertise to consummate the aforescribed purchase and sale of said warrants which the Plaintiff wished to sell. Based upon the information provided to the Defendant by the Plaintiff, the Defendant agreed to consummate the aforescribed transaction and to collect a commission which was agreed to by the Plaintiff.

9. On or about October 16, 1967, the Plaintiff was contacted by the Defendant, AGENSIO, and was informed that, pursuant to the agreement entered into on October 15, 1967, the Defendant, STEINBERG & LYMAN, agreed to purchase the

aforescribed purchase warrants from the Plaintiff at Four Dollars and Fifty Cents (\$4.50) per warrant and/or had located a buyer who was willing to purchase the purchase warrants at Four Dollars and Fifty Cents (\$4.50) per warrant. On that same date, the Defendant, STEINBERG & LYMAN, acting by and through ASEMSIO, confirmed in writing that the Defendant, STEINBERG & LYMAN, had sold the twenty thousand (20,000) warrants at Four Dollars and Fifty Cents (\$4.50) each for a total price of Ninety Thousand Dollars (\$90,000.00.) Said agreement and sale was confirmed by the Defendants in writing. See Exhibit "A" attached hereto and incorporated herein by reference.

10. In furtherance of said agreement and at the specific instruction of the Defendants, the Plaintiff delivered the aforementioned purchase warrants on October 20, 1987, to a transfer agent agreed upon by the parties, namely, The First National Bank of Palm Beach, Florida. The delivery of said purchase warrants and the receipt of said purchase warrants by the transfer agent was acknowledged and confirmed in writing. See composite Exhibit "B" attached hereto and incorporated herein by reference.

11. The parties specifically agreed that all conditions necessary for completion of the purchase and sale agreement would be completed and the Plaintiff would be entitled to his proceeds of the purchase warrants upon his delivery of the purchase warrants to the transfer agent, namely, The First National Bank of Palm Beach, Florida, as directed by the Defendants. Said delivery of the purchase warrants to the transfer agent conformed in all respects to the agreements between the parties and fully completed their agreement.

COUNT I

12. The Plaintiff readopts and realleges Paragraphs 1 through 11 above as if fully set forth herein.

13. This is an action for breach of a contract.

14. Despite the fact that the Plaintiff had fully performed all conditions necessary to entitle him to the net proceeds of the purchase warrant sale, the Defendants breached the contract by failing to deliver to the Plaintiff the agreed upon proceeds in the amount of Ninety Thousand Dollars (\$90,000.00), as more fully delineated in Exhibit "A".

15. As a direct and proximate result of the Defendants' breach of the agreement, the Plaintiff has suffered substantial and egregious pecuniary damages including, but not limited to, the net proceeds due to him under the purchase and sale agreement and the profits/loss therefrom. Further, the Plaintiff has incurred substantial attorneys' fees and costs to prosecute this action.

16. There are no justiciable issues of either law or fact concerning the Defendants' liability to the Plaintiff for the sums sued for hereunder.

WHEREFORE, the Plaintiff demands judgment against the Defendant for damages, interest, costs and attorneys' fees.

COUNT II

17. Plaintiff readopts and realleges Paragraphs 1 through 16 above as if fully set forth herein.

18. This is an action for negligent or intentional breach of a fiduciary duty.

19. At all times material hereto the Defendants, pursuant to the afore-described agreement and, as an investment banking and brokerage firm, owed the Plaintiff a duty to act with the utmost integrity, honesty and good faith respecting all matters relating to the relationship created by the purchase and sale agreement reached between them.

20. At some point in time after the Defendants had sold the twenty thousand (20,000) purchase warrants of the Plaintiff and the Plaintiff had fully completed all conditions of the agreement by delivering the purchase warrants to the transfer agent, the Defendants negligently and/or intentionally

breached its fiduciary duty to the Plaintiff by failing to deliver the Plaintiff's purchase warrants to the buyer who had been procured and collecting the Ninety Thousand Dollars (\$90,000.00) due from the sale.

21. As further evidence of the Defendants' breach of fiduciary duty owed to the Plaintiff, the Defendants instead bought purchase warrants on the open market of SCI Holdings, Inc. at a substantially lower price per warrant and resold these purchase warrants to the buyer to whom they had agreed to sell the Plaintiff's purchase warrants.

22. As a direct and proximate result of the Defendants' breach of its fiduciary duty owed to the Plaintiff, the Plaintiff has suffered substantial and egregious pecuniary loss including, but not limited to, the loss of the net proceeds due on the sale, the profit to be realized by the sale, and substantial legal expenses and costs, all of which the Defendants could reasonably have foreseen as a result of its acts.

23. There are no justiciable issues of either law or fact concerning the Defendants' breach of its fiduciary duty owed to the Plaintiff.

WHEREFORE, the Plaintiff demands judgment against the Defendants for damages, interest, costs and reasonable attorneys' fees.

CONCLUSION

24. Plaintiff reads and realleges Paragraphs 1 through 23 above as if fully set forth herein.

25. This is an action for violation of the Florida Securities and Investor Protection Act.

26. During the course of business dealings between the Plaintiff and the Defendants, STEINBERG & LYMAN, and MANUEL P. ASENCIO, the following fraudulent dealings and material misrepresentations were perpetrated upon the Plaintiff:

a. Defendants utilized the Plaintiff's twenty thousand (20,000) purchase warrants in SCI Holdings, Inc. and/or their availability for sale, to procure a purchaser to whom the Defendants then sold its own purchase warrants bought on the open market, thereby realizing profits to which the Plaintiff was otherwise entitled.

b. Defendants made material misrepresentations of fact concerning its ability to locate a buyer for the Plaintiff's purchase warrants and, in fact, the Defendants never intended to sell the Plaintiff's purchase warrants to the buyer, but rather intended to buy its own purchase warrants in SCI Holdings, Inc. and resell them to the buyer originally reserved for the Plaintiff.

c. By way of its untrue and material misrepresentations made to the Plaintiff, the Defendants were able to locate and obtain a buyer for the Plaintiff's purchase warrants and hold that buyer until they were able to buy similar purchase warrants at a lower price and resell them to the buyer reserved for the Plaintiff.

d. The transactions, practices or course of business dealings used by the Defendants operated as a fraud and deceit upon the Plaintiff.

27. There are no justiciable issues of either law or fact concerning the Defendants' breach of the Florida Securities and Investor Protection Act and the Defendants are liable to the Plaintiff for attorneys' fees under Chapter 514 et seq.

WHEREFORE, the Plaintiff demands judgment against the Defendants for general damages, punitive damages, interest, costs and attorneys' fees pursuant to Florida Statute Chapter 514 et seq.

COUNT IV

28. Plaintiff readopts and realleges Paragraphs 1 through 26 above as if fully set forth herein.

29. This is an action for fraud and deceit.

30. At all times material hereto and during the course of dealings between the parties, the Defendant, STEINBERG & LYMAN, acting by and through its authorized agent, representative or employee, and ASENSIO, acting individually, made material misrepresentations concerning the ability and agreement of the Defendants to sell the twenty thousand (20,000) purchase warrants of the Plaintiff in SCI Holdings, Inc. All acts of the Defendant's authorized agent, representative or employee, ASENSIO, were ratified and approved of by the Defendant, STEINBERG & LYMAN.

31. Acting in complete and justifiable reliance upon the representations of the Defendants, the Plaintiff utilized the professional services of the Defendants and delivered twenty thousand (20,000) purchase warrants to the transfer agent as agreed upon between the parties.

32. The delivery of said purchase warrants was based upon the Defendants' representation that the purchase warrants had been sold and that the proceeds of the sale, minus the Defendants' commission, would be forthcoming. The representations made by the Defendants concerning its ability and agreement to sell the Plaintiff's purchase warrants were false and untrue at the time they were made. The Defendants intended to utilize the Plaintiff's purchase warrants to procure a buyer to whom they would not sell the Plaintiff's purchase warrants, but rather, would buy similar purchase warrants on the open market at a lower price and resell them to the Plaintiff's buyer, thereby realizing a profit to the exclusion and detriment of the Plaintiff.

33. Based upon these material misrepresentations, the Plaintiff was induced to enter into the sales agreement and deliver his purchase warrants to the transfer agent.

34. The actions of the Defendants as described herein were willful, wanton, malicious and made with reckless indifference to the rights of the Plaintiff.

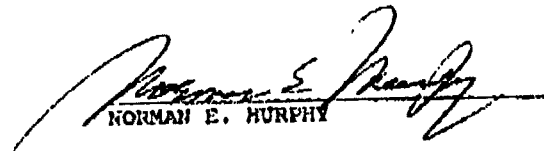
35. As a direct and proximate result of the fraud and deceit perpetrated upon the Plaintiff by the Defendants, the Plaintiff has suffered substantial and egregious pecuniary loss including, but not limited to, the loss of the net proceeds due from the sale, profits to be made from the sale, and attorneys' fees and costs incurred to enforce his rights.

WHEREFORE, the Plaintiff demands judgment against the Defendants for general damages, punitive damages, interest, costs and attorneys' fees.

VERIFICATION

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned Notary Public, on this day personally appeared NORMAN E. MURPHY, who being by me duly sworn on his oath deposes and says that he is the Plaintiff in the above-styled case; that he has read the above and foregoing Complaint; and that every statement contained therein is true and correct.


NORMAN E. MURPHY

SWORN TO AND SUBSCRIBED before me on the 27th day of January, 1968, to certify which witness my hand and official seal.

Norman De Alton
Notary Public, State of Florida
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
BY COMMISSION EXP. FEB 1, 1969
126.00 STATE CAPITAL 1968, 68d.

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