

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION, INC.

CASE:01-00933

Researched Roofing Systems, Inc. and Robert LoCoco, claimants vs. George Patrick Ford Jr., Monroe Parker Securities, Inc., and John P. Clancy, respondents.

ATTORNEYS:

For Claimant Researched Roofing Systems, Inc. appeared Robert LoCoco, President, Orland Park, IL.

For Respondent George Patrick Ford, Jr., appeared Marc J. Ross, Esq., and William Byers, Jr., Esq., of the firm Sichenzia, Ross & Friedman LLP, new York, NY.

Respondents John Clancy and Monroe Parker Securities, Inc., have not submitted a response to the Statement of Claim.

DATE FILED: February 26, 2001

CASE SUMMARY: Claimant alleged that respondents mismanaged his account and recommended stocks that were unsuitable to claimant's investment objectives thereby causing a loss to claimant's account.

Claim Data

Claim: \$18,055.58
Interest: at 5.5%/\$7,033.24

Filing Fees: \$425.00
Other: unspecified

Award Data

Award: \$10,807.06
Interest: at NY statutory rate per annum from May 3, 1995 until date of payment of the award.

Filing Fees: \$336.48
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the claimant \$10,807.06. 2) Respondents are jointly and severally liable and shall pay to the claimant interest at the New York statutory rate per annum from May 3, 1995 until the date of payment of the award. 3) All other relief requests are denied. 4) The \$425.00 filing fee previously deposited with NASD Dispute Resolution, Inc. by the claimant, shall be retained by NASD Dispute Resolution, Inc. 5) Respondents are jointly and severally liable and shall pay claimant \$336.48 as reimbursement of part of the filing fee.

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OTHER ISSUES: Pursuant to the By-Laws of NASD Dispute Resolution, the arbitrator determined that respondents John P. Clancey and Monroe Parker Securities, Inc. were served notice of the Statement of Claim by regular mail, Overdue Notice and Notification of Arbitrator by certified mail, and is therefore bound by the arbitrator's ruling and determination.

ARBITRATOR'S REPORT: See Attached Exhibit A.

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Theodore M. Utchen, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Theodore M. Utchen, Esq., 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.

Theodore M. Utchen

Theodore M. Utchen, Esq.

OCTOBER 26, 2001

Signature Date

November 6, 2001

Date of Service (For NASD-DR office use only)

In the Matter of the Arbitration Between
RESEARCHED ROOFING SYSTEMS, INC.

Claimant

vs.

NASD-DR No. 01-00933

GEORGE PATRICK FORD, JR.,
JOHN CLANCY, and
MONROE PARKER SECURITIES, INC.

Respondents

ARBITRATOR'S AWARD

REPRESENTATION OF PARTIES

Claimant Research Roofing Systems, Inc., represented by its President, Robert LoCoco, pro se.

Respondent George Patrick Ford, Jr., represented by Marc J. Ross, Esq., and William Byers, Jr., Esq. of the law firm of Sichenzia, Ross & Friedman LLP, of New York, New York.

Respondents John Clancy and Monroe Parker Securities, Inc., have not filed a Submission Agreement or any other pleadings or documents.

CASE INFORMATION

Statement of Claim filed on or about February 21, 2001.
Claimant signed Uniform Submission Agreement on February 21, 2001.
Statement of Answer filed by Respondent George Patrick Ford, Jr.,
on or about April 25, 2001.

STATEMENT OF FACTS

As sole arbitrator, I have been asked to decide this case on the basis of the pleadings and other documentation that has been filed herein. The file handed me contains only a Submission Agreement and a Statement of Claim (in the form of a letter to NASD) filed by the Claimant and a Statement of Answer filed by Respondent George Patrick Ford, Jr. There are no submission agreements or pleadings from John Clancy or Monroe Parker Securities, Inc.

The facts appear to be as follows. The Claimant herein is Researched Roofing Systems, Inc., acting by its President, Robert LoCoco, the sole owner of all of its stock. The investment account appears in the name of the corporation on all account statements that have been furnished. In April of 1995 Mr. LoCoco was approached by Respondent George Patrick Ford, Jr., a broker with

Monroe Parker Securities, Inc., who solicited Mr. LoCoco to purchase stocks through Monroe Parker. It is uncontroverted that Mr. LoCoco told Mr. Ford that LoCoco had suffered a large stock investment loss in 1986 and that he wanted to invest only in blue chip, relatively safe stocks, and could not afford to lose any money he would put into stocks.

On April 24, 1995 Mr. LoCoco (always acting for Claimant corporation herein) purchased through Mr. Ford 500 shares of Quaker Oats Company stock at 34-3/4 per share for a total cost of \$17,485.00. (All totals include miscellaneous transaction charges.) Nine days later on May 3, 1995 Mr. Ford's boss, Respondent John Clancy, contacted Mr. LoCoco and suggested he sell the Quaker Oats stock at 34-1/4 per share for total proceeds of \$17,064.42, and then purchase 3,000 shares of Madden Steven Ltd (could this possibly be Steven Madden Ltd?) at 5-7/8 per share for a total cost of \$17,635.00. These transactions were executed, and Mr. LoCoco paid in the additional amount of \$570.58 to cover the difference between his Quaker Oats proceeds and the cost of the Madden Steven stock.

Three months later on August 3, 1995 Mr. Clancy advised Mr. LoCoco to sell the Madden Steven stock at 7-13/16 per share for total proceeds of \$23,422.50, and to purchase 23,000 warrants of Czeck Industries, Inc. at \$1.00 per share for a total cost of \$23,015.00. Almost eight months later on March 29, 1996 Mr. Ford contacted Mr. LoCoco and advised him to sell the Czeck Industries warrants at 7/8 for total proceeds of \$20,110.00, and to purchase 4,800 shares of Smartel Communications Corporation at 4-1/4 per share for a total cost of \$20,415.00, and these transactions were executed. In August 1996 the name of Smartel Communications was changed to Intasys Corporation. As of August 30, 1996 Intasys stock was worth 1.563 per share for a total value of \$7,502.40 in Mr. LoCoco's account. Mr. LoCoco states that over the next year he placed numerous telephone calls to Mr. Ford who continued to assure him that Intasys was a good investment and would come back.

By this time Mr. LoCoco had become unhappy with Mr. Ford and Mr. Clancy at Monroe Parker Securities, and on August 25, 1997, Mr. LoCoco transferred his account to another investment firm, La Jolla Capital. At that time the 4,800 shares of Intasys stock were worth \$7,248.52 (including a \$1.26 cash credit in Claimant's account). On August 28, 1997 Mr. LoCoco sold his Intasys stock for that amount and purchased another stock through La Jolla Capital, and the latter stock was eventually declared valueless as of December 12, 2000, as shown on the December 31, 2000 account statement furnished to Mr. LoCoco.

RELIEF REQUESTED BY CLAIMANT, and RESPONDENT FORD'S ANSWER THERETO

Mr. Lococo states that he would not have transferred his account to La Jolla Capital, where it eventually became totally

valueless, had he not been so unhappy with Mr. Ford and Mr. Clancy from Monroe Parker Securities, Inc., and he places the "initial blame" on them. From them he therefore seeks "to be made whole" for his entire loss of value. It is uncontroverted (except for a very minor arithmetic error by Mr. LoCoco) that Mr. LoCoco had funded his account at Monroe Parker with a total of \$18,055.58 (not the \$18,055.28 set forth by him in his Statement of Claim), and he seeks this amount plus interest of 5.5 percent plus his \$425 cost of this arbitration less \$88.52 he received from the money market portion of his account with La Jolla Capital. He suggests that a sum of \$25,000 would be a fair and reasonable recovery.

Mr. Ford states in response that Mr. LoCoco's account was worth \$7,248.52 at the time it was transferred to La Jolla Capital, so any loss incurred during Respondents' management of Mr. LoCoco's account must be limited to only \$10,807.06, which is the difference between the total funds of \$18,055.58 entrusted to Monroe Parker Securities and the \$7,248.52 value of Mr. LoCoco's account when transferred to La Jolla Capital. Further, Mr. Ford states in his own defense that Mr. LoCoco actually made money on the trades in his account while Mr. Ford was his account executive:

1. Mr. LoCoco purchased Quaker Oats stock through Mr. Ford for a total cost of \$17,485.00. This was subsequently sold during Mr. Clancy's management of the account at a small loss of \$420.58 which did not occur during Mr. Ford's management of the account.

2. After Mr. Ford had reassumed management of the account, he advised Mr. LoCoco to sell Czeck Industries warrants for \$20,110.00, which was a loss of \$2,905.00 below their purchase cost of \$23,015.00 paid during Mr. Clancy's management of the account. However, Mr. Ford states that the warrants were worth only \$5,750.00 when he took back the account from Mr. Clancy, so that with sale proceeds of \$20,110.00 Mr. LoCoco actually made a profit of \$14,360.00 on the warrants between the time Mr. Ford took back the account and the time he recommended their sale. (Mr. Ford has made a small arithmetic error when he states in his Answer that Mr. LoCoco's profit was \$15,360.00.)

3. Mr. Ford then placed Mr. LoCoco in Smartel Communications stock at a total cost of \$20,415.00. Smartel's name was subsequently changed to Intasys. By the time Mr. LoCoco transferred his account to La Jolla Capital this stock was worth only \$7,248.52. The stock was still in Mr. LoCoco's account when it was transferred to La Jolla Capital. This created an unrealized paper loss of \$13,166.48 at the time of the transfer.

4. However, Mr. Ford makes the observation that when he reassumed management of Mr. LoCoco's account from Mr. Clancy, the account was worth only \$5,750.00, but it was worth \$7,248.52 when Mr. LoCoco transferred the account to La Jolla Capital, so there

was no net paper loss for the account during Mr. Ford's management of it.

5. Further decrease in Mr. LoCoco's account down to zero when its holdings became valueless occurred only after the account was transferred to La Jolla Capital.

ARBITRATOR'S AWARD

I herewith enter my Award in favor of Claimant Researched Roofing Systems, Inc. and against Respondents George Patrick Ford, Jr., John Clancy, and Monroe Parker Securities, Inc., jointly and severally, in the amount of \$10,807.06 compensatory damages, plus interest on that amount at the New York statutory rate running from May 3, 1995 until paid, plus costs of \$336.48 (\$425 filing fee less \$88.52 cash credit in Claimant's investment account), on the basis that Respondents caused losses to Claimant by placing him in unsuitable securities contrary to his clearly expressed objectives.

Let me say at the beginning that it is uncontroverted that the Claimant, by Mr. Robert LoCoco, its President and sole shareholder, had informed Mr. Ford that he had suffered a large loss the only previous time he had invested in stocks, that he wanted to invest only in blue chip stocks that were relatively safe, and that he could not afford to lose any money he would invest through Monroe Parker Securities. Although Claimant, appearing pro se by Mr. LoCoco, does not say it expressly, it is implicit that he bases his claim on the ground that Respondents placed him into unsuitable securities in light of his objectives as he communicated them to Respondents, with the result that he suffered an eventual total loss on his investments.

I am going to find that (with the possible exception of Quaker Oats stock) Respondents did place Claimant into unsuitable securities, directly contrary to the objectives that he conveyed to Respondents. The pleadings filed do not discuss the nature or business history of the particular companies whose stocks were purchased for Claimant's account except for one instance: Respondent Ford himself, in a footnote on page 4 of his own Statement of Answer, states that "It is beyond peradventure that warrants are speculative investments," thus admitting in effect that Respondent John Clancy had placed Claimant in an unsuitable investment when Mr. Clancy purchased warrants of Czeck Industries, Inc. for Claimant's account. I subsequently requested additional information from the parties as to the financial history and performance of the companies purchased for Claimant's account, but only Mr. Ford submitted a response, and it was very brief and incomplete. Accordingly, I reach my conclusion of unsuitable securities based on my evaluation of the pleadings and documentation filed by the parties.

With respect to Claimant's first investment, the purchase of Quaker Oats stock as advised by Mr. Ford and the sale thereof as advised by Mr. Clancy, there was a small loss of \$420.58 on the sale of that stock. (Mr. Ford states that this loss was \$250.00, but that is an arithmetic error.) On the other hand, the next investment, the purchase and sale of Madden Steven Ltd. stock as advised by Mr. Clancy, resulted in a profit to Claimant of \$5,787.50. (Mr. Ford states that this profit was \$6,000.00, but that is an arithmetic error.) This was followed by the purchase of Czeck warrants at a cost of \$23,015.00, as advised by Mr. Clancy, that were subsequently sold on Mr. Ford's advice for a loss of \$2,905.00 below their purchase cost.

The most substantial loss for Claimant stems from the next investment, the purchase of Smartel Communications stock (later known as Intasys Corporation) as advised by Respondent Ford at a total cost of \$20,415.00, and this stock had dropped to a value of only \$7,248.52 (including a small cash credit) when Claimant decided to transfer his account, with this stock still in it, to another investment firm. Prior to Claimant's transfer of the account to another firm, Mr. Ford had in fact been recommending the continued retention of Intasys stock with the expectation of a recovery in its value, but Claimant did make the decision to sell that stock for proceeds of \$7,248.52 immediately upon his transfer of his account to the other firm. Parenthetically, Mr. Ford points out that, subsequent to Claimant's sale of Intasys stock through the new brokerage firm, that stock did in fact appreciate to a high of \$14.18 per share as compared to Claimant's cost of \$4.25 per share when he purchased it through Mr. Ford, so that if Claimant had followed Mr. Ford's advice to hold the stock, he would have made a profit rather than suffering a loss.

It is true that the actual substantial loss that Claimant did incur took place on the sale of Intasys Corporation stock after his account had been transferred to another investment firm, and the timing and amount of that sale was in no way dictated by the Respondents in this case. However, I have found that Respondents did not adhere to Claimant's expressed objective of investing only in "blue chip, relatively safe stocks" (with the possible exception of Quaker Oats stock) that would not subject him to losses, and in fact placed Claimant for the most part into unsuitable securities. Accordingly, I also find that under all these circumstances, when the account is transferred to another firm, it is entirely up to the Claimant as investor to decide when to liquidate the unsuitable holdings that Respondents had placed him in, and if a loss is incurred, responsibility must fall upon Respondents. Having placed Claimant into unsuitable securities, Respondents cannot be allowed to pick and choose Claimant's timing for him, and they must abide by the consequences of Claimant's decision as to when to step out of such securities.

In this connection, I cannot accept Mr. Ford's suggestion that if Claimant had only honored Mr. Ford's suggestion to hold on to Intasys stock, he would not have suffered any loss because the stock did in fact appreciate in value over its cost subsequent to the transfer of Claimant's account to La Jolla Capital. That is a contention that cuts both ways. Suppose the stock had depreciated further after the transfer to the new firm instead of appreciating in value. Would Mr. Ford willingly have acknowledged his responsibility for such a loss? We cannot subject Claimant to the up-and-down speculations of the market place when the occasion for that was the placement of Claimant into unsuitable securities by Respondents.

Accordingly, I must render my Award in favor of the Claimant. As to calculation of damages, I find that Claimant entrusted to Respondents the aggregate amount of \$18,055.58 and that Claimant's account, finally consisting only of Intasys Corporation stock (and a small cash credit) was worth only \$7,248.52 when it was transferred to another investment firm, La Jolla Capital. Upon that transfer, Claimant immediately sold the Intasys stock for that sum of \$7,248.52 (including a small cash credit). La Jolla Capital's subsequent management of Claimant's account resulted in it being reduced to zero, but Respondents cannot be held responsible for such subsequent reduction to zero. Respondents can only be held responsible for the difference between the \$18,055.58 entrusted to them and the \$7,248.52 realized on the sale of the Intasys stock into which they had placed the Claimant, this difference amounting to \$10,807.06. (In addition, the Award shall also include Claimant's costs, and also interest as set forth at the beginning of this section of the Award to run from May 3, 1995, the date the Quaker Oats stock (arguably a "blue chip") was sold and Madden Steven stock was purchased, beginning the several investments in unsuitable securities that eventually resulted in Claimant's loss stemming from Respondents' investment recommendations.)

First, I find Respondent Ford liable. His final advice to Claimant placed Claimant into Smartel Communications at \$20,110.00, and this stock (subsequently renamed Intasys Corporation) had fallen to a value of \$7,248.52 when the account was transferred away from Monroe Parker Securities, Inc. Mr. Ford contends that he should not be held responsible for any of this loss because when he reassumed management of the account from Mr. Clancy, the Czech Industries warrants then comprising the account were worth only \$5,750.00; Mr. Ford advised the sale of these warrants only after they had increased in value to \$20,110.00; and he then advised the purchase of Smartel Communications stock for \$20,415.00, which fell in value to \$7,248.52 when the account was transferred to La Jolla Capital. Thus Mr. Ford contends that from the time he reassumed management of the account at a value of \$5,750.00 and until the account was transferred to La Jolla Capital at a value of \$7,248.52, Claimant actually made a paper profit of \$1,498.52

during his handling of Claimant's account, and Mr. Ford therefore should not be charged with having caused the Claimant any loss.

I cannot accept this contention of Respondent Ford because he overlooks the fact that it was he who placed the Claimant into Smartel Communications stock for \$20,415.00, and it was this stock (subsequently known as Intasys Corporation) that had fallen to the value of \$7,248.52 at the time it was transferred to La Jolla Capital, thus causing a significant paper loss to the Claimant. Mr. Ford cannot look only at the \$5,750.00 value of the account when he reassumed managing it and the final \$7,248.52 account value when it was transferred to another firm. He must also take into consideration the paper losses occurring during his period of management of the account.

I further find Respondent Clancy liable on the ground that he was the supervisor or "boss" of Mr. Ford, as indicated in Claimant's Statement of Claim that was not controverted in this regard, and he had a duty to supervise Mr. Ford that was breached. I further find Monroe Parker Securities, Inc., liable on the ground that it was the employing firm and is clearly responsible under the principle of respondeat superior.

As previously set forth, I make the award jointly and severally against all three respondents. If Mr. Ford continues to believe that he has some kind of claim for contribution from the other two Respondents, he may pursue that, but that is a matter among the several Respondents and should not affect Claimant's recovery against all the Respondents on a joint and several basis.

Dated: October 4, 2001

Theodore M. Utchen

Theodore M. Utchen
Arbitrator