

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 02-06716

William Terry
William Terry Agency, Inc.

Name of the Respondents

Hearing Site: Richmond, Virginia

Great Eastern Securities, Inc.
Joseph Pagano
Michael Bruno
Alphonse Mekalainas

Nature of the Dispute: Customers vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants, William Terry ("Terry") and William Terry Agency, Inc. ("Agency"), hereinafter collectively referred to as "Claimants", were represented by Kim Steven Juhase, Esq., Novak & Juhase, Roseland, New Jersey.

Respondents, Great Eastern Securities, Inc. ("Great Eastern"), Joseph Pagano ("Pagano"), Michael Bruno ("Bruno"), and Alphonse Mekalainas ("Mekalainas"), hereinafter collectively referred to as "Respondents", were represented by Robert Bertsch, Esq., Bertsch & Associates, P.C., Port Washington, New York.

CASE INFORMATION

Statement of Claim filed on November 6, 2002.

Claimant Terry signed the Uniform Submission Agreement individually and on behalf of Claimant Agency on October 21, 2002.

Statement of Answer filed by Respondents on January 23, 2003.

Respondent Bruno signed the Uniform Submission Agreement on January 29, 2003.

Respondent Pagano signed the Uniform Submission Agreement on January 29, 2003.

Respondent Mekalainas signed the Uniform Submission Agreement on January 23, 2003.

A representative of Respondent Great Eastern executed the Uniform Submission Agreement on April 27, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: unsuitability, breach of contract, fraud, negligence, *respondeat superior*, violation of §§ 10(b) and 19(b) of the Securities Exchange Act, violation of Rule 10b-5, and violations of Code of Virginia § 13.1-522 and

Virginia Administrative Code § 21 VAC 5-20-280(3). The causes of action relate to the purchase of New UnitedGlobalCom, Inc. stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to mitigate, waiver, estoppel, ratification, violation of an SRO's rules does not give rise to a private cause of action, contributory and/or comparative negligence, any alleged damages were caused by unforeseen market forces, assumption of risk, and failure to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimants in their Statement of Claim requested compensatory damages in the amount of \$170,000.00, return of profits and commissions, interest, attorney's fees, and punitive damages in an amount to be determined by the arbitrators.

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed with prejudice, that Respondents be awarded their costs, fees, and expenses, that the individual Respondents' Central Registration Depository records be expunged, and any other and further relief deemed appropriate under the facts and circumstances of the case.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants' Statement of Claim named "John" Debiase as a respondent in the matter. As Claimants were unable to properly identify this respondent he was never served with the Statement of Claim and was not a party to this proceeding.

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.

FINDINGS OF FACT

After hearing all the evidence, and the arguments of the very able counsel for the parties, and after due and full deliberation, the Panel makes the following Findings and Award:

1. The Materiality of the Undisclosed Facts

The Panel finds that the Claimant Terry was interested in aggressive short-term trading in his stock positions, including the shares of New UnitedGlobalCom, Inc. (symbol UCOMA), the security at issue in this case. The Panel therefore finds that the fundamental research data which Claimants introduced into evidence, most of which was not disclosed by Respondents to the Claimant Terry at the time of investing, was not material to Claimant Terry's decision to invest with Respondent Great Eastern. For this reason, the full range of damages requested by the Claimants, including the losses that Claimants sustained in UCOMA shares in Claimant Terry's

other brokerage accounts as well as Claimant Agency's accounts, is denied.

However, the Panel finds that the portion of losses realized by Claimant Terry in connection with his investment account at Respondent Great Eastern were in part due to the negligent sales practices on the part of the Respondents, as explained below. This included the failure to disclose certain facts regarding the use of the insider trading data, which was the basis for the Respondents' trading recommendation to Claimant Terry.

2. The Negligent Sales Practices Of The Respondents

The Panel is very concerned about certain of the Respondents' sales practices as revealed in the evidence presented at the hearing, including the following:

- Sales campaigns and research at Respondent Great Eastern are handled solely at the local office, with the consequence that the decision of what securities to promote to clients is decided at the local office level. Moreover, such research as is performed regarding these securities is also conducted and controlled exclusively at the local office level, as was the case for the shares of UCOMA in this case.
- Little or no regional or national supervision is exercised over the local offices in their due diligence research regarding the securities which they promote to customers. This has had the effect of leaving local offices at Respondent Great Eastern on their own in making research and trading decisions, decisions which appear to be beyond their competence to make. The lack of supervision also had the effect, at least in this case, that the central supervisory personnel at Respondent Great Eastern were unaware, until Claimant Terry complained, of what securities were being promoted at the local level or on what basis.
- The sales team at the Port Washington office relied on a single indicator for its trading decision regarding UCOMA. The evidence disclosed that that indicator, namely the extent of insider purchases at subject companies, might on occasion have a positive effect on the short-term prices of shares. However, the evidence also showed that such data might, on occasion, not have such an effect on share prices. This fact was not disclosed to investors, including Claimant Terry.
- A number of brokers in the Port Washington office promoted the purchase of UCOMA shares to a large portion of their book of customers, with little regard for questions of investment suitability for the individual investors in question. This included in particular the sales activity of Respondent Pagano, who promoted UCOMA shares to the great bulk of his book of customers.
- The Branch Office Manager, Ms. Colleen Garay, apparently knew little or nothing about the company New UnitedGlobalCom, Inc., or its shares, despite the fact that a number of the brokers working under her supervision, and perhaps a majority of them, were aggressively promoting the stock.

- The Respondents lost *both copies* of the due diligence research file for the UCOMA investment, evidently in the course of a move of its local office. This had the consequence that the Panel and the parties were obliged to surmise as to what information was researched and kept on file at the local Port Washington office, if any, regarding this security.

The Panel concludes that a portion of the losses which Claimant Terry suffered were due to the foregoing negligent sales practices of the Respondents.

3. Respondent Great Eastern's Willful Failure To Protect Its Customer

Of great concern to the Panel is the fact that, once Claimant Terry became concerned about the losses in his UCOMA position, he called his Great Eastern broker Respondent Pagano repeatedly and was unable to reach him or to obtain a return call from him. Claimant Terry testified that, in view of the fact that he mentioned the possibility of litigation, he was told by Respondent Great Eastern personnel that his account was being frozen and that he would not be able to speak with his broker.

Respondents conceded in testimony that Respondent Pagano was removed from the account and that he was instructed by the Branch Manager, Ms. Colleen Garay, not to speak with Claimant Terry. This had the effect of locking Claimant Terry into his UCOMA position, while the value of its shares continued to fall.

Respondents testified that the decline of the market value of UCOMA shares during the time period at issue was the result of the terrorist disaster on September 11, 2001. The Panel has concluded that a large portion of the losses occurred before that time, and that the evidence suggests that the stock was continuing an uninterrupted decline at the time of the disaster. Moreover, the Panel finds that had the Respondents been willing to speak with its customer and to protect his interests, the losses would not have occurred.

For this reason, a large portion of the loss in Claimant Terry's UCOMA shares was caused by Respondent Great Eastern. The Panel finds that Respondent Pagano had no role in this wrongful conduct and did not cause the losses associated with it.

4. Damages

The Panel finds that the Claimant lost a total of \$78,945.00 in UCOMA shares in his Great Eastern account, including transaction costs. Of this amount, the Panel finds that a total of \$44,100.00 was caused by the failure of Respondent Great Eastern to speak with Claimant Terry or to attempt in any meaningful way to limit his losses.

AWARD

The Panel has therefore decided in full and final resolution of the issues submitted for

determination as follows:

1. Respondent Great Eastern is liable to and shall pay to Claimant Terry compensatory damages in the amount of \$44,100.00, plus simple interest at a rate of 8% per annum from October 10, 2001 until the date this Award is paid in full;
2. Respondents Great Eastern, Pagano and Mekalainas are jointly and severally liable to and shall pay to Claimant Terry compensatory damages of \$34,845.00, plus simple interest at a rate of 8% per annum from October 10, 2001 until the date this Award is paid in full;
3. Respondents Great Eastern, Pagano and Mekalainas are jointly and severally liable to and shall pay to Claimants reimbursement of the claim filing fee in the amount of \$300.00;
4. All claims against Respondent Bruno are denied in their entirety;
5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
6. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Great Eastern is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: January 13, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conferences: September 10, 2003 1 session

Three (3) Hearing sessions @ \$1,125.00 = \$3,375.00
Hearing Dates: April 27, 2004 2 sessions
April 28, 2004 1 session

Total Forum Fees = \$4,950.00

The Panel has assessed \$4,950.00 of the forum fees jointly and severally to Respondents Great Eastern, Pagano and Mekalainas.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 300.00

2. Respondent Great Eastern is assessed and shall pay the following fees:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Great Eastern, Pagano and Mekalainas are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$4,950.00
Total Fees	= \$4,950.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,950.00

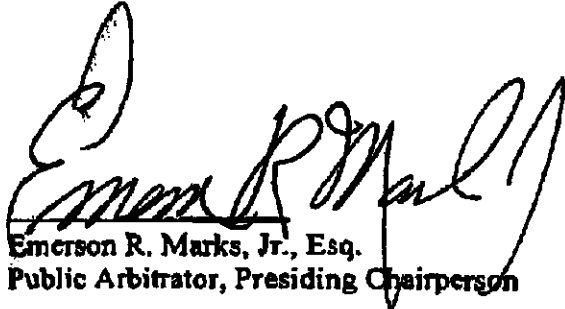
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Emerson R. Marks, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Wesley C. Wilson	-	Public Arbitrator, Panelist
James Edward Knowles	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures


Emerson R. Marks, Jr., Esq.
Public Arbitrator, Presiding Chairperson

May 10, 2004
Signature Date

Wesley C. Wilson
Public Arbitrator, Panelist

Signature Date

James Edward Knowles
Non-Public Arbitrator, Panelist

Signature Date

May 12, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Emerson R. Marks, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Wesley C. Wilson
Wesley C. Wilson
Public Arbitrator, Panelist

11 May 2004
Signature Date

James Edward Knowles
Non-Public Arbitrator, Panelist

Signature Date

May 12 2004
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

Emerson R. Marks, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Wesley C. Wilson
Public Arbitrator, Panelist

Signature Date


James Edward Knowles
Non-Public Arbitrator, Panelist

05/11/04
Signature Date

May 12 2004
Date of Service (For NASD Dispute Resolution office use only)