

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Joel Efron, M.D.
William Goldstein, M.D.
Steven H. Wolf, M.D., Esq.

90-02770

Name of Respondents

First Eagle, Inc.
Strategies International, Inc.
Ted Giergielewicz
Jon Vargo

REPRESENTATION

For Claimants Joel Efron, M.D., William Goldstein, M.D. and Steven H. Wolf, M.D., Esq. ("Claimants"): Michael Serres, of Newman Tannenbaum et al.

For Respondent First Eagle, Inc. ("First Eagle"): First Eagle did not have a representative present at the hearing, nor did it file a Statement of Answer.

For Respondent Strategies International, Inc. ("Strategies"): Strategies did not have a representative present at the hearing, nor did it file a Statement of Answer.

Respondent Ted Giergielewicz ("Giergielewicz") appeared pro se.

Respondent John Vargo ("Vargo") appeared pro se.

CASE INFORMATION

Joint Statement of Claim filed: October 4, 1990.

Claimants' Submission Agreements signed on: December 18, 1990.

Respondent First Eagle did not file a Statement of Answer nor sign a

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Submission Agreement, as required, pursuant to Section 25 of the Code of Arbitration Procedure ("Code").

Respondent Strategies did not file a Statement of Answer nor sign a Submission Agreement, as required, pursuant to Section 25 of the Code.

Statement of Answer and Motion of Dismissal filed by Respondent Giergielewicz on: March 23, 1991.

Respondent Giergielewicz's Submission Agreement signed on: February 18, 1991.

Statement of Answer filed by Respondent Vargo on: March 23, 1991.

Respondent Vargo's Submission Agreement signed on: January 21, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: January 21, 1992/1 session
 February 24, 1992/2 sessions
 October 13, 1992/1 session
 December 3, 1992/2 sessions

Hearing Location: NASD, Inc./New York, New York

CASE SUMMARY

Claimants alleged on or about March 15, 1990, Giergielewicz contacted Claimant Efron and informed him that First Eagle had acquired a large number of shares in the Mills Jennings Company ("MJK") and that the stock should rise "immediately." Claimants alleged Efron spoke with the other Claimants and on or about March 26, 1990, and then informed Giergielewicz that Claimants would purchase some shares. Claimants alleged Giergielewicz told Efron he would come to Claimants' office to pick up payment for the shares. Claimants alleged when Giergielewicz arrived at their office he told them to make their cheques payable to Strategies. Claimants alleged Efron gave Giergielewicz a cheque in the amount of \$8,200.00 and Claimant Wolf gave Giergielewicz two (2) cheques totalling \$12,337.50, all made payable to Strategies. Claimants alleged they did not receive confirmations reflecting the purchase of the MJK stock. Efron alleged he spoke with Giergielewicz several times and that in early June 1990, he informed him that if Claimants did not receive confirmations for the purchase of MJK within

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two (2) weeks they would demand a refund. Claimants alleged they did not receive confirmations and demanded a refund. Claimants alleged Efron was contact by Vargo on July 6, 1990 who informed him that First Eagle could not refund the payments because of an ongoing investigation by the State of New Jersey. Claimants alleged that on or about August 3, 1990, Vargo told Efron that an employee of Strategies named Houge had misappropriated Claimants' monies and that Vargo was attempting to obtain the monies from Houge. Claimants alleged that during the first week of August 1990, Vargo told Efron that Claimants had been defrauded and he proposed Claimants accept 50,000 shares of MJK and shares of Strategies in settlement, which Claimants refused.

Respondent Giergielewicz admitted he contacted Efron regarding MJK stock in that he believed it would rise; however, he did not use the term immediately, or any like term. Giergielewicz maintained he ordered the stock for Claimants and was told by David Houge to collect the monies prior to Settlement date as the stock was rising. Giergielewicz alleged he was instructed to have the cheques made payable to Strategies since "we were not officially First Eagle" and as soon as the transaction was completed, accounts would be set up under Claimants' names. Giergielewicz alleged he explained this to Claimants. Giergielewicz maintained he picked up the monies early because the stock was rising and that Claimants were told they would receive their new accounts and confirmations as soon as possible. Giergielewicz asserted he spoke with Efron many times and that Vargo told both him and Efron that the accounts could not be opened until the New Jersey Bureau of Securities approved opening of the office. Giergielewicz asserted Efron phoned in late June 1990 stating Claimants wanted their stock or their money returned; he referred Efron to Vargo as per Vargo's instructions. Giergielewicz maintained it was explained to him that due to the New Jersey Bureau of Securities investigation, neither the stock nor the money could be forwarded to Claimants and that Claimants had to wait until things "were settled."

Respondent Vargo denied he contacted Efron during July 1990 and informed him that First Eagle could not refund the payments made by Claimants relating to MJK stock due to an ongoing investigation by the State of New Jersey or that First Eagle might be negatively implicated in the investigation if the money was returned. Vargo denied he informed Efron that Claimants would receive a full refund; that he informed Efron that an employee of Strategies named Houge had misappropriated Claimants' monies and that he was attempting to obtain those monies to refund to Claimants; and that he informed Efron that Claimants had been defrauded and that he proposed they accept 50,000 shares of MJK and shares of Strategies in settlement.

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RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$137,839.41; inclusive of interest, punitive damages and attorneys' fees.

Respondent Giergielewicz maintained that Claimants failed to prove their case against him.

Respondent Vargo requested: judgment dismissing the Complaint; costs and reasonable counsel fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

The Arbitrators determined that because the NASD was unable to serve Respondents First Eagle, Inc. and Strategies International, Inc. with a Statement of Claim, copy of the Code of Arbitration Procedure and Hearing Advance Sheet, which provided the name of the arbitrator, and the date, time and location of the hearing in the above-captioned matter, Claimants claims against Respondents First Eagle, Inc. and Strategies International, Inc. are dismissed without prejudice.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1- Respondents, Giergielewicz and Vargo are hereby liable, jointly and severally, in the amount of \$25,517.10, inclusive of interest;
- 2- Claimants' claim against Respondents for punitive damages is denied;
- 3- All other claims are denied;
- 4- Respondents Giergielewicz and Vargo are hereby liable, jointly and severally, to Claimants for attorneys' fees and shall pay to Claimants the sum of \$20,000.00;

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a- Attorneys' fees are awarded in reliance on Matter of Apollo, (New York City Civil Court, January 3, 1992).

OTHER COSTS

- 1- Claimants are hereby liable and shall pay to the NASD the sum of \$300.00, said sum to be assessed for the postponement requested by Claimants and granted by the arbitrator;
- 2- Respondent Giergielewicz is hereby liable and shall pay to the NASD the sum of \$300.00, said sum to be assessed for one postponement requested by Respondent and granted by the arbitrator;
- 3- Respondents Giergielewicz and Vargo are hereby liable, jointly and severally, to Claimants for attorneys' disbursements and shall pay to Claimants the sum of \$2,017.25.
- 4- Respondents Giergielewicz and Vargo shall reimburse Claimants the sum of \$300.00 which represents the hearing session deposit previously paid by Claimants and \$230.00 which represents an overpayment by Claimants to the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$120.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed.

6 sessions X \$300.00 = \$1,800.00

Forum fees Assessed Against:

- 1- Respondents Giergielewicz and Vargo are hereby liable, jointly and severally, and shall pay to the NASD the sum of \$1,270.00.

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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature

Murray I. Sommer

Murray I. Sommer/Public Arbitrator

Date of Decision: December 28, 1992