

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
<u>Name of Claimant(s)</u>)	
Thomas J. Peters)	Case Nos. <u>90-02932</u>
Leslie J. Schurr)	90-03202
Peter A. Lomeo)	91-00066
Mary M. Swanson)	91-00353
DeArle Masters and)	91-00536
Jeffrey J. Salenne)	91-00537
<u>Name of Respondent(s)</u>)	
Princeton Financial Group)	
Anthony J. Pontieri)	
Jerry Frederick Shorthouse)	
Charles Brimble)	

REPRESENTATION

For Claimants, Thomas J. Peters ("Peters"), Leslie J. Schurr ("Schurr"), Peter A. Lomeo ("Lomeo"), Mary M. Swanson ("Swanson"), DeArle Masters ("Masters"), and Jeffrey J. Salenne ("Salenne"): Richard W. Groner, Esq. of Snyder & Groner.

For Respondents, Princeton Financial Group ("Princeton"), Anthony Pontieri ("Pontieri") and Jerry F. Shorthouse ("Shorthouse"): Anthony Pontieri.

For Respondent, Charles Brimble ("Brimble"): Randy K. Sterns, Esq. of Bush, Ross, Gardner, Warren & Rudy, P.A.

CASE INFORMATION

Statements of Claim filed on: October 15, 1990 and amended on November 15, 1990 for Peters, January 4, 1991 for Schurr, February 1, 1991 for Lomeo, December 15, 1990 for Swanson, November 9, 1990 for Masters and February 19, 1991 for Salenne.

Claimants' Submission Agreements signed on: October 15, 1990 by Peters, November 30, 1990 by Schurr, December 1, 1990 by Lomeo, February 1, 1991 by Swanson, November 6, 1990 by Masters, December 14, 1990 by Salenne.

Respondents, Princeton, Pontieri and Shorthouse filed their Statements of Answer on: February 18, 1991 for the Peters Claim; March 4, 1991 for the Schurr Claim; March 6, 1991 for the Lomeo Claim; May 6, 1991 for the Swanson Claim; April 29, 1991 for the Masters Claim, which Answer was amended on: May 7, 1991, and, April 1, 1991 for the Salenne Claim.

Respondent, Brimble, filed his Statements of Answer on May 14, 1991 for the Peters, Schurr, Lomeo and Masters Claims and on May 22, 1991 for the Salemme Claim. Respondent, Brimble, failed to file an Answer for the Swanson Claim.

Respondents, Pontieri and Shorthouse signed their Submission Agreements, with Pontieri signing on behalf of Princeton, on August 7, 1991 for the Peters, Schurr and Swanson Claims and on April 23, 1991 for the Lomeo and Salemme Claims. Respondents, Princeton, Pontieri and Shorthouse, failed to file Submission Agreements for the Masters Claim as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure. Respondents, Pontieri and Shorthouse, being persons associated with an NASD member firm and Respondent, Princeton, being an NASD member firm at the time this controversy arose.

Respondent, Brimble, signed his Submission Agreements on May 13, 1991 for the Peters, Schurr, Salemme, Lomeo and Masters Claims and failed to file a Submission Agreement for the Swanson Claim as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure. Respondent, Brimble, being a person associated with an NASD member firm at the time this controversy arose.

HEARING INFORMATION

On December 4, 1991, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On December 17, 1991, in Tampa, Florida, a hearing lasting two (2) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for: misrepresenting the value of a certain company as an investment; negligence; engaging in "boiler room" tactics; breach of fiduciary duty; fraud and deceit; violations of Florida and Federal Securities Laws and of the rules and regulations of the NASD and NYSE; failure to supervise; and, breach of contract. Claimants alleged that Respondents manipulated the price of a certain stock, and misrepresented the value of the stock's issuer.

Respondents, Princeton, Pontieri and Shorthouse, denied all allegations of wrongdoing and alleged that: Claimants failed to identify the broker or brokers with whom they spoke; Claimants failed to allege any specific misrepresentation; and, any losses were due to Claimants' own actions.

Respondent, Brimble denied all allegations of wrongdoing and alleged that; any mark-ups or mark-downs of securities for which Princeton was a market maker were established solely by Princeton's officers and principals.

Respondent, Brimble, asserted affirmative defenses including: failure to state a claim; compliance with Princeton's supervisory manual; any fraudulent actions by Princeton's brokers were outside the scope of their employment; compliance with established procedures and, good faith.

RELIEF REQUESTED

Claimant, Peters, requested damages in excess of \$16,000.00 plus punitive damages of \$25,000.00 plus interest, costs and attorney's fees.

Claimant, Schurr, requested damages in excess of \$6,600.00 plus punitive damages of \$3,000.00 plus interest, costs and attorney's fees.

Claimant, Salenne, requested damages in excess of \$4,400.00 plus interest, costs and attorney's fees and an unspecified amount of punitive damages (requested at the hearing).

Claimant, Lomeo, requested damages in excess of \$6,400.00 plus punitive damages of \$3,500.00 plus interest, costs and attorney's fees.

Claimant, Masters, requested damages in the excess of \$4,807.50 plus an unspecified amount of punitive damages, interest, costs and attorney's fees.

Claimant, Swanson, requested damages in excess of \$4,260.00 plus punitive damages of \$5,000.00, plus interest, costs and attorney's fees.

Respondents, Princeton, Pontieri and Shorthouse, requested dismissal of the claims, plus costs, attorney's fees and such other relief as the Panel deems appropriate.

Respondent, Brimble, requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure and pursuant to the forms U-4 executed by Respondents, Pontieri and Shorthouse.

2. For the reasons set forth in the records of proceedings, this Panel finds service upon and adequate notice to Respondents, Princeton, Pontieri and Shorthouse. The NASD has made every attempt to locate and serve Respondents, Princeton, Pontieri and Shorthouse, with Notice of this hearing as demonstrated by the evidence contained in the record of proceedings.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and Respondents, Princeton, Pontieri and Shorthouse neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding their knowledge of this arbitration as evidenced in the record of proceedings, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Brimble was dismissed with prejudice by the Claimants at the hearing and, therefore, no determination was made as to his liability.

2. Respondents, Princeton, Pontieri and Shorthouse are found liable, jointly and severally, and shall pay to Claimants the following amounts:

A. To Claimant, Peters, the amount of \$16,901.62 plus interest in the amount of \$882.00 for a total due of \$17,783.62;

B. To Claimant, Schurr, the amount of \$6,636.25 plus interest in the amount of \$398.18 for a total due of \$7,034.43;

C. To Claimant, Lomeo, the amount of \$6,434.38 plus interest in the amount of \$386.17 for a total due of \$6,820.45;

D. To Claimant, Swanson, the amount of \$4,257.00 plus interest in the amount of \$256.50 for a total due of \$4,531.50;

E. To Claimant, Masters, the amount of \$9,988.25 plus interest in the amount of \$599.30 for a total due of \$10,587.55;

F. To Claimant, Salernme, the amount of \$5,822.50 plus interest in the amount of \$349.35 for a total due of \$6,171.85

3. Respondents, Princeton, Pontieri and Shorthouse are also found liable for punitive damages. This Panel bases its authority to award punitive damages on the Federal Arbitration Act (Title 9 U.S. Code) and the case law interpreting that Act. This Panel finds that the actions complained of were intentional, fraudulent, willful, wanton, and malicious and justify an Award of punitive damages. Respondents, Princeton, Pontieri and Shorthouse shall pay punitive damages in the following amounts:

A. To Claimant, Peters, the amount of \$25,000.00

B. To Claimant, Schurr, the amount of \$3,000.00

C. To Claimant, Lomeo, the amount of \$3,500.00

D. To Claimant, Swanson, the amount of \$5,000.00

E. To Claimant, Masters the amount of \$10,587.55

F. To Claimant, Salernme, the amount of \$6,171.85, pursuant to his request at the hearing.

4. Respondents, Princeton, Pontieri and Shorthouse, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$20,000.00 for attorney's fees pursuant to Section 517.211, Florida Statutes. This Panel bases its authority to Award attorney's fees on the Federal Arbitration Act (Title 9 U.S. Code) and the case law interpreting that Act.

OTHER COSTS

1. Respondents, Princeton, Pontieri and Shorthouse are also found liable, jointly and severally, and shall pay to Claimants the amount of \$4,623.55 for costs of expert witnesses and copying.

2. Respondents, Princeton, Pontieri and Shorthouse's requests for costs and attorney's fees are denied.

3. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (1 pre-hearing conference x 500 plus 2 sessions x \$500.00 per session). Respondents, Princeton, Pontieri and Shorthouse are hereby assessed \$1,500.00, jointly and severally, of which \$1,255.00 shall be paid as follows:

- A. To Claimant, Peters, \$280.00
- B. To Claimant, Shurr, \$200.00
- C. To Claimant, Lomeo, \$400.00
- D. To Claimant, Swanson, \$200.00
- E. To Claimant, Masters, \$75.00
- F. To Claimant, Salenne, \$100.00

Respondents, Princeton, Pontieri and Shorthouse, shall pay the balance of \$245.00 directly to the NASD. The NASD shall retain the amounts deposited by the Claimants in partial satisfaction of such forum fees.

Respondents, Princeton, Pontieri and Shorthouse, are also assessed the non-refundable filing fees paid by Claimants and are ordered to pay such filing fees in the following amounts:

- A. To Claimant, Peters, \$120.00
- B. To Claimant, Schurr, \$75.00
- C. To Claimant, Lomeo, \$75.00
- D. To Claimant, Swanson, \$75.00
- E. To Claimant, Masters, \$50.00
- F. To Claimant, Salenne, \$50.00

Concurring Arbitrators' Signatures

Name

 /s/
Richard Reeves, Esq.

Public

 /s/
James R. Kennedy, Jr., Esq.

Public

 /s/
Regar Mickler

Industry

Date of Decision: February 13, 1992