



N.A.S.D. AWARD

Arbitration

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 Claimant(s)

Joseph Barberio

91-01655

Name of Respondent(s)

Wall Street Discount Corporation  
Ernst & Company

REPRESENTATION

For Claimant: Donal B. Barrett of Barrett & Associates's.

For Respondent, Ernst & Company: Michael H. Du Boff, Esq. of Salom, Marrow & Dyckman.

For Respondent, Wall Street Discount Corporation: Edward Gasthalter, Esq. of Hoffman & Pollok.

CASE INFORMATION

Statement of Claim filed: May 20, 1991.

Claimant's Submission Agreement signed on: April 18, 1991.

Statement of Answer of Respondent, Ernst & Company filed on: July 8, 1991.

Statement of Answer of Respondent, Wall Street Discount Corporation filed on: July 2, 1991.

Submission Agreement of Respondent, Ernst & Company signed on: July 8, 1991 by Daniel J. Christofano on behalf of the firm.

Submission Agreement of Respondent, Wall Street Discount Corporation signed on: June 28, 1991 by Alan Lederfeind on behalf of the firm.

HEARING INFORMATION

Hearing Date/Sessions: November 6, 1991/Two (2) Sessions.

Hearing Location: Buffalo, New York.

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CASE SUMMARY

Claimant, Joseph Barberio, alleged that Respondent, Ernst & Company and its affiliate, Respondent, Wall Street Discount Corporation purchased, on margin, for his account, securities (Bally's Park Place, Inc. and Bally Manufacturing Corp.) that were unsuitable for him in light of his age and financial circumstances. Claimant alleged that Respondents action caused him tremendous financial losses.

Respondent, Ernst & Company, maintained that it was merely the clearing broker in connection with securities transactions placed by Claimant with Wall Street Discount Corporation and that its conduct, including, but not limited to margin calls and liquidation upon failure to meet margin calls were performed in accordance with and in full compliance with all exchange regulations and its standards for margin accounts.

Respondent, Wall Street Discount Corporation denied all Allegations of wrong doing and maintained that for some 12 years it had taken unsolicited orders from Claimant without complaint. Wall Street further maintained that if in fact Claimant did sustain losses from the trading of Bally securities or other wise he is solely responsible for such losses.

RELIEF REQUESTED

Claimant requested an award of Compensatory Damages in the amount of \$66,487.50 plus compensatory damages in an additional indeterminate amount representing losses suffered by Claimant as a result of the forced sale by Ernst of additional securities from Claimant's account which have subsequently risen in value, punitive damages in the amount of \$250,000.00 together with applicable interest Costs and attorneys' fees in connection with this proceeding.

Respondent, Ernst & Company requested dismissal of the Claim and that Claimant be assessed all costs and expenses relating to this proceeding.

Respondent, Wall Street Discount Corporation requested dismissal of the Claim and that it be awarded the costs, disbursements and reasonable attorneys' fees incurred in defending this proceeding.

AWARD

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

AWARD-#91-01655

1. All Claims of the Claimant, Joseph Barberio, against Respondents, Ernst & Company and Wall Street Discount Corporation, shall be and are hereby dismissed in all respects;
2. The parties shall each bear their own costs including attorneys' fees;
3. Pursuant to Section 43(c) the NASD, Inc. shall retain the \$200.00 previously deposited by the Claimant and the following forum fees are assessed:

FORUM FEES

Two sessions X \$500.00 = \$1,000.00

Forum fees assessed against:

- 1- Claimant, in the amount of \$333.00, however, Claimant may use his \$50.00 hearing session deposit to offset part of this fee therefore the amount due and owing equals to \$283.00;
- 2- Respondent, Ernst & Company, in the amount of \$333.00;
- 3- Respondent, Wall Street Discount Corporation, in the amount of \$333.00.

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

Thee parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Philip Marshall, Esq.

Public/Chairman

/s/

James G. Parker

Public/Panelist

/s/

Michael J. Ryan

Industry/Panelist

DATED BY NASD  
DECEMBER 10, 1991