

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert A. Hammers

92-01334

Names of Respondents

**J. Gregory & Company, Inc.
James G. Mongno,
Estate of James G. Mongno, Patrick Mongno, Executor
Warren R. Schrelber
Stuart M. Cohen
Dianne A. Borden**

REPRESENTATION

For Claimant, Robert A. Hammers ("Hammers"): Kalju Nekvasil, Esq. of Goodman & Nekvasil, P.A., Safety Harbor, Florida.

For Respondent, J. Gregory & Company, Inc. ("J. Gregory"): pro se (see "Other Issues").

For Respondent, James G. Mongno ("J.G. Mongno"): pro se (see "Other Issues")

For Respondent, The Estate of James G. Mongno, Patrick Mongno, Executor ("The Estate of J. G. Mongno"): pro se (see "Other Issues").

For Respondent, Warren R. Schrelber ("Schrelber"): Barton S. Sachar, Esq. of Hornsby, Sachar, Zelman & Stanton, Miami, FL 33131

For Respondents, Stuart M. Cohen ("Cohen"), and Dianne A. Borden ("Borden"): pro se

CASE INFORMATION

The original Statement of Claim (which was un-dated) was filed on or about: June 3, 1992.

Amended Statement of Claim filed: May 27, 1993

Claimant's Submission Agreement signed on: June 3, 1992

Page 2

NASD Award #92-01334

A Joint Statement of Answer to the original Statement of Claim, of Respondents, J. Gregory and J.G. Mongno, was filed on July 30, 1992 by the Law Firm of De Martino Finkelstein Rosen & Virga, Washington, D.C.

A Joint Statement of Answer to the Amended Statement of Claim of Respondents, J. Gregory, J.G. Mongno, Schreiber and Borden was filed: June 25, 1993 by the Law Firm of De Martino Finkelstein Rosen & Virga, Washington, D.C.

Respondent, J. Gregory's Submission Agreement/Corporate Acknowledgment signed on: July 30, 1992 by James G. Mongno as President of J. Gregory & Company, Inc.

Respondent, J.G. Mongno's Submission Agreement signed on: July 30, 1992.

Respondents, Schreiber, Cohen and Borden did not submit executed Submission Agreements as required by Section 25 of the Code of Arbitration Procedure.

Respondent, Stuart M. Cohen, did not submit a Statement of Answer nor did he submit an executed Submission Agreement as required by Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

On September 8, 1993 a pre-hearing conference lasting three (3) sessions was conducted with the full Panel of Arbitrators.

On November 7, 1995 a hearing lasting two (2) sessions was conducted in Tampa, Florida.

CASE SUMMARY

Claimant alleged that Respondents, J. Gregory, Mongno, Schreiber, Cohen and Borden, fraudulently induced Claimant to enter into a contract (i.e., Branch Office Agreement) by failing to make material disclosures and making material misrepresentations, that Respondents breached this contract with Claimant; and that Respondents engaged in a conspiracy to steal Claimant's branch office from him. Claimant also alleged that Respondents defamed Claimant verbally and in writing by, among other things, making false oral statements to the NASD, making false statements on Claimant's Form U-5, and making defamatory statements to Claimant's employees and managers. Claimant further alleged that Respondent's actions constituted breach of contract, common law fraud, intentional and unjustified interference with an advantageous relationship, conspiracy, defamation, civil theft, intentional infliction of severe emotional distress and breach of Florida franchise laws.

Respondents denied the allegations of wrongdoing contained in the Statement of Claim and the Amended Statement of Claim and maintained that they did not fraudulently induce Claimant to

enter into the contract; that they did not breach the contract; and that they properly terminated the contract by giving the required notice. Respondents further alleged that they withheld certain monies otherwise due to Claimant for legitimate purposes and that it was Claimant who materially breached the agreement. Respondents asserted numerous defenses including the following: that the Amended Statement of Claim failed to state a Claim for which relief might be granted; Claimant failed to mitigate damages; Respondents, Mongno, Schreiber and Borden should be dismissed because they were not parties to the contract; that any statements made to NASD personnel by one or more of Respondents and the contents of the Form U-5 enjoyed a complete or qualified privilege; and, that Claimant's Claims were barred in whole or in part by the doctrines of waiver and estoppel.

RELIEF REQUESTED

Claimant requested actual damages of \$1 million and punitive damages of \$5 million. Claimant further requested an accounting of the gross commissions and trading profits generated by Claimant's office (December 1991-January 1992) and Respondent, J. Gregory's Tampa, Florida, branch office (January 1992-Present); ninety percent (90%) of the gross commissions for December, 1991 (approximately \$142,000.00) and January 1992 (approximately \$315,000.00); fifty percent (50%) of the trading profits generated by Claimant's office from the inception to the termination of the Agreement (June 1991-January 1992); ninety percent (90%) of the gross commissions that Claimant's office generated in 1992 (approximately \$300,000.00/monthly); other consequential damages incurred by Claimant as a result of Respondents' misconduct, such as the long-term equipment and office leases on which Claimant is obligated; punitive and treble damages; attorneys' fees and costs; and compensation for Claimant's emotional and mental anguish, embarrassment, humiliation, pain and suffering.

Respondents requested dismissal of the Claim and that they be awarded their costs and attorneys' fees incurred in connection with this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

1. By letter dated August 2, 1993, from Jeffrey S. Rosen, Esq. of De Martino Finkelstein Rosen & Virga, the NASD was informed that Respondent, James G. Mongno had died on Friday, July 30, 1993.
2. Based upon a Court Order dated January 17, 1995, The Estate of James G. Mongno, Patrick Mongno, Executor, was added as a party to this matter.
3. On November 2, 1995, the NASD was informed, via facsimile from Patrick Mongno, that Respondent, J. Gregory, had sought an order of relief under the Bankruptcy Code, thereby staying this proceeding as it pertains to Respondent, J. Gregory.
4. Although Statements of Answer were filed by all Respondents, except Cohen, none of the Respondents appeared at the hearing. Based upon the evidence submitted in Arbitrator's

Exhibit No. 1, this Arbitration Panel found that jurisdiction exists pursuant to Section 12 (a) of the Code of Arbitration Procedure, over all the Respondents. Pursuant to Section 29 of the Code of Arbitration Procedure, and based upon evidence in Arbitrators Exhibit No. 1, this Arbitration Panel proceeded with the hearing in Respondents' absence.

The parties present at the hearing 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 agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. Respondents, The Estate of James G. Mongno, Patrick Mongno, Executor, Schreiber, Cohen and Borden are found liable, jointly and severally, and shall pay to Claimant, damages in the amount of \$1,125,000.00.
2. Respondents, The Estate of James G. Mongno, Patrick Mongno, Executor, Schreiber, Cohen and Borden are further found liable, jointly and severally, for common law fraud and civil theft, and shall pay to Claimant punitive damages in the amount of \$3,375,000.00.
3. Further, based upon the finding by the Panel of common law fraud and civil theft, Respondents, The Estate of James G. Mongno, Patrick Mongno, Executor, Schreiber, Cohen and Borden, are found liable, jointly and severally, and shall pay to the Claimant, attorneys' fees, the amount of which shall be determined by a court of competent jurisdiction.
4. Respondents, The Estate of James G. Mongno, Patrick Mongno, Executor, Schreiber, Cohen and Borden, are further found liable, jointly and severally, and shall pay to Claimant the further amount of \$100,000.00, for sanctions, for failure to produce documents in this case.
5. Claimants request for Specific Findings is hereby denied.
6. Respondent, Schreiber's Motion to Continue Trial, or in the Alternative, Motion to Re-Open Record is hereby denied.
7. Respondent, Borden's Motion to Dismiss is hereby denied.
8. All other Claims are hereby denied.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed Forum fees in the amount of \$3,250.00 (three (3) pre-hearing sessions + two (2) hearing sessions (on the merits) X \$650.00).

1. Respondents are hereby jointly and severally assessed forum fees in the amount of \$3,250.00, \$650.00 of which shall be paid directly to the Claimant and the remaining \$2,600.00 shall be paid to the NASD, Inc.
2. The NASD shall retain the non-refundable filing fee of \$200.00 and the hearing session deposit of \$650.00 previously deposited by the Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Kathleen Baggett Church

Industry/Chairperson

/s/

Peter Alessandri

Industry/Panellist

/s/

Ben E. Fisher

Industry/Panellist

Date of Decision: December 13, 1995