

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Anne, Louis, Louis V. & Michael Mazzella

92-02200

Name of Respondents

Dean Witter Reynolds Inc.
Paul Cantatore

REPRESENTATION

For Claimant: Joseph R. Gagliano, Jr., Esq. of Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, LLP located in New York, New York.

For Respondents: John M. Vassos, Esq. of Morgan, Lewis & Bockius located in New York, New York.

CASE INFORMATION

Statement of Claim filed: July 1, 1992.

Claimant Anne J. Mazzella's Submission Agreement signed on: June 23, 1992.

Claimant Louis Mazzella's Submission Agreement signed on: June 23, 1992.

Claimant Louis V. Mazzella, Jr.'s Submission Agreement signed on: June 23, 1992.

Claimant Michael Mazzella's Submission Agreement signed on: June 23, 1992.

Joint Statement of Answer filed by Respondents Dean Witter Reynolds, Inc. ("Dean Witter") and Paul Cantatore ("Cantatore") on: October 12, 1992.

Respondent Dean Witter's Submission Agreement signed on: April 2, 1993.

Respondent Cantatore's Submission Agreement signed on: March 29, 1993.

HEARING INFORMATION

Hearing Dates / Sessions:

- May 24, 1994 / 2 Sessions.
- May 25, 1994 / 2 Sessions.
- May 26, 1994 / 1 Session.
- September 12, 1994 / 2 Sessions.
- September 13, 1994 / 2 Sessions.
- September 14, 1994 / 2 Sessions.
- December 5, 1994 / 2 Sessions.
- December 6, 1994 / 2 Sessions.
- March 6, 1995 / 2 Sessions.
- March 7, 1995 / 2 Sessions.
- March 14, 1995 / 2 Sessions.
- April 4, 1995 / 2 Sessions.

Hearing Location: Offices of the National Association of Securities Dealers, Inc. located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimants alleged that Respondents, acting in concert, knowingly, willfully and intentionally and acting with reckless disregard for Claimants' interests made false statements and misrepresentations of material facts to Claimants concerning two publicly traded corporations, Rochester Community Savings Bank ("RCSB") and Nicolet Instrument Corporation ("NIC"). Claimants alleged that the misrepresentations were made in order to induce Claimants to purchase the securities issued by RCSB and NIC. Claimants further alleged that Respondents falsely represented to Claimants that acquisitions of RCSB and NIC were imminent and that the acquisitions would greatly increase the value of RCSB and NIC securities and result in substantial profits for Claimants. In addition, Claimants alleged that Respondent Cantatore informed Claimants that he possessed confidential, material information concerning the imminent acquisitions of RCSB and NIC. Claimants alleged that Cantatore told Claimants that a tender offer for RCSB was imminent and would be made at \$22.00 per share at a time when RCSB was trading at approximately \$16.00 per share. Claimants further alleged that Cantatore informed Claimants that a tender offer would be made for NIC at \$22.00 per share at a time when NIC was trading at approximately \$13.00 per share. Claimants next alleged that in reasonable reliance upon these representations, Claimants purchased substantial amounts of RCSB and NIC securities which caused the market values of these securities to increase substantially. Claimants alleged that Cantatore urged them to purchase RCSB in their Dean Witter accounts and in other brokerage house accounts held by Claimants to conceal the size of Claimant's position in RCSB. Additionally, Claimants alleged that once the price of the stocks had increased in market value, Cantatore, through Dean Witter, sold his RCSB and NIC securities while he continued to urge Claimants to buy and hold their securities in RCSB and NIC.

Respondents maintained that in the Spring of 1989 Louis Mazzella told Cantatore that he was a wealthy real estate investor interested primarily in speculative investments, specifically, potential takeover stocks. Respondents maintained that Cantatore expressed his opinion to Mazzella that, based upon his review and analysis of public information, he believed RCSB was a potential takeover candidate. Respondents maintained that Mazzella confirmed that he had also heard of RCSB as such a stock. Respondents maintained that Mazzella then opened an account with Dean Witter in his wife's name, Anne Mazzella, in which he had trading authority. Respondents also maintained that two other accounts were opened in the name of Mazzella's sons and one for the entire family, with each account having as its stated primary investment objectives speculation and capital appreciation. Respondents maintained that with respect to the RCSB and NIC investments that: Cantatore's opinions were the product of his examination of public records and information; Louis Mazzella independently identified RCSB and NIC as potential takeover stocks and had invested in each before contacting Cantatore; and that despite Mazzella's urging, Cantatore never provided Mazzella with inside information nor told Mazzella that he was providing such information. Respondents maintained that at no time did Cantatore tell Mazzella that his comments and information about RCSB were confidential inside information because Cantatore never possessed such information about RCSB. Respondents maintained that Cantatore did advise Mazzella, that in the case of potential takeover stocks, such as RCSB, it was wise to keep their research and opinions confidential to avoid a run on the stock. Respondents further maintained that between July 1989 and September 1989 Mazzella accumulated more than 105,000 shares of RCSB, worth approximately \$1.8 million, primarily in the Anne Mazzella account, with approximately 12,300 shares in the children's account. Respondents also maintained that Mazzella had acquired large amounts of RCSB through other brokerage firms.

Respondents maintained the following affirmative defenses: (1) All trades in the Mazzella's accounts were made by Claimants and were consistent with their investment objectives; (2) All trades in the Mazzella accounts were ratified by Claimants and therefore Claimants were estopped from making any claim based upon those trades; (3) There was no failure by Dean Witter to adequately supervise Cantatore and there is no private right of action for failure to supervise; (4) To the extent that Claimants believed they were receiving and acting upon illegally divulged inside information, their claim is barred by the doctrine of *in pari delicto*; and, (5) Claimants' claims under section 10(b) of the Securities and Exchange Act and Rule 10b-5 promulgated thereunder, are barred by the applicable statutes of limitations.

RELIEF REQUESTED

Claimants requested:

1. An award of \$2,930,347.
2. Interest.
3. Reasonable attorneys' fees.
4. Forum costs.

Respondents requested:

1. The Statement of Claim filed by Claimants Anne J. Mazzella, Louis Mazzella, Louis V. Mazzella, Jr., and Michael Mazzella be dismissed in its entirety.
2. The panel should grant any other relief to Dean Witter and Cantatore that the Panel deems just and proper, including but not limited to costs, expenses, and attorneys' fees.

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. Respondent Dean Witter is liable and shall pay to Claimants the sum of seventy five thousand (\$75,000) dollars inclusive of interest.
2. Claimants' claims against Respondent Cantatore are dismissed.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

23 sessions X \$1,000 = \$23,000 minus hearing session deposit of \$1,000 = net \$22,000 due.

Forum fees Assessed Against:

1. Claimants are assessed the sum of \$11,500 which represents one-half of the total forum fees due, less \$1,000 hearing session deposit paid by Claimants, leaving \$10,500 due. Claimants are liable jointly and severally and shall pay to the NASD the sum of \$10,500.
2. Respondent Dean Witter is assessed the sum of \$11,500 which represents one-half of the total forum fees due. Dean Witter is liable and shall pay to the NASD sum of \$11,500.

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

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Concurring Arbitrators' Signatures

Name

Public Chairman

George R. Freund

Name

Industry Panelist

William A. Hohausen
William A. Hohausen, Esq.

Name

Public Panelist

David Fogel, Esq.

Date of Decision: _____

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NASD Award #92-02200

STATE OF:

SS:

COUNTY OF:

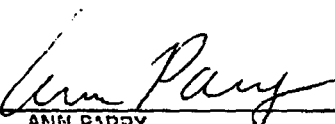
On this day of , 1995, before me personally appeared **George R. Freund** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NEW YORK*

On this *31st* day of *MAY* , 1995, before me personally appeared **William A. Hohausser, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ANN PARRY
Notary Public, State of New York
No. 31-01 02102
Qualified in New York County
Comm. on Exp. 12 April 12, 1997

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **David Fogel, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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NASD Award #92-02200

Concurring Arbitrators' Signatures

Name

Public Chairman



George R. Freund

Name

Industry Panelist

William A. Hohausser, Esq.

Name

Public Panelist

David Fogel, Esq.

Date of Decision: _____

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NASD Award #92-02200

STATE OF: *New Jersey*

SS:

COUNTY OF: *Union*

On this *1st* day of *June*, 1995, before me personally appeared **George R. Freund** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Joan M. Pallante

JOAN M. PALLANTE
NOTARY PUBLIC - NEW JERSEY
My Commission Expires Mar. 17, 1999

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **William A. Hohausser, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **David Fogel, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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NASD Award #92-02200

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David Fogel, Esq.

Date of Decision: _____

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NASD Award #92-02200

STATE OF:

SS:

COUNTY OF:

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STATE OF:

SS:

COUNTY OF:

On this day of , 1995, before me personally appeared **William A. Hohausser, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF BERGEN
STATE OF NEW JERSEY
DIANE S. FOGEL
NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 6, 1999
I.D. NO. 2169521

SS:

COUNTY OF:

On this 1st day of June , 1995, before me personally appeared **David Fogel, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Diane S. Fogel

COUNTY OF BERGEN
STATE OF NEW JERSEY
DIANE S. FOGEL
NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 6, 1999
I.D. NO. 2169521