

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Samuel L. Bare and Daniel LaPadula

Case #92-02250

Name of Respondent(s)

Manchester Rhone Securities Corp.,  
John Figliolini

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**REPRESENTATION**

For Claimant, Samuel L. Bare ("Bare") and Daniel LaPadula ("LaPadula"): Samuel L. Bare, Esq.

For Respondent, Manchester Rhone Securities ("MRS"): Karen LoSordo.

For Respondent, John Figliolini ("Figliolini"): pro se.

**CASE INFORMATION**

Statement of Claim filed: June 8, 1992. Claimants' Submission Agreement signed on July 3, 1992.

Respondent, Figliolini's, Statement of Answer filed August 24, 1992. Respondent's Submission Agreement signed August 14, 1992 by Respondent Figliolini.

Respondent, MRS did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code (see Other Issues).

**HEARING INFORMATION**

On June 23 and 24, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were

conducted.

### **CASE SUMMARY**

Claimants alleged that Respondents acted unethically by failing to execute a sell order for Wave Tech stock given by the Claimants; and, that Respondents and their brokers divested themselves of their own shares in preference to Claimant's.

Respondent, Figliolini, denied all allegations of wrongdoing and alleged that Claimants were not entitled to purchase the investment to begin with; that LaPadula accepted employment as a CPA conflicting with his status as a purchaser of Wave Tech; that Claimants attempted to or did trade on insider information; that LaPadula did not give sell instructions and did not have power of attorney over accounts for which he allegedly gave such instructions; and, Claimants failed to timely complain.

### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$104,774.00 plus reimbursement of interest expenses incurred.

Respondent, Figliolini requested dismissal.

### **OTHER ISSUES CONSIDERED & DECIDED**

(1) At the beginning of the hearing MRS requested leave to appear via telephone. The other parties had no objection, and leave was granted. However, shortly after Ms. LoSordo appeared on behalf of MRS, she announced that Respondent Figliolini would proceed with the representation of MRS.

(2) Mr. Figliolini stated that he was not authorized to execute a Uniform Submission Agreement on behalf of MRS, so NASD staff counsel was instructed to forward one to Ms. LoSordo for signature. Ms. LoSordo sent a letter via fax, which was marked and received as Arbitrator's Exhibit #2, stating the reasons she could not execute the Submission Agreement.

(3) Based upon the record evidence adduced at the hearing and contained in the NASD's file, this Panel finds that the NASD followed proper procedures in effecting service upon MRS; that such service was effected; that actual notice of the hearing was given to MRS; and, that the Panel has jurisdiction over MRS based upon the foregoing facts, and because at the time the facts giving rise to the Claim occurred, MRS was a member firm of the NASD.

(4) Upon learning that Ms. LoSordo would not execute the Submission Agreement, Mr. Figliolini stated he would not continue to represent MRS. During a further appearance by Ms. LoSordo with her attorney, Dianne Trainor, via speaker telephone, Claimants announced that they were withdrawing their claims against Figliolini, with prejudice, in exchange for his

testimony against MRS. After consultation, MRS announced that it would not further attend the hearing via telephone by either Ms. LoSordo or Ms. Trainor.

(5) The Claimants 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 Claimants have 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) Respondent, MRS, is found liable and shall pay to the Claimants the amount of \$97,204.00.
- (2) Claimants' request for reimbursement of interest incurred is denied.

### **OTHER COSTS**

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 \$3,000.00 (4 sessions x \$750.00).
- (2) Claimants, jointly and severally, are hereby assessed \$1,500.00, for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$750.00 payable to the National Association of Securities Dealers, Inc.
- (3) Respondent, Figliolini, is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc.
- (4) The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

Name

Public

15/  
Michael Lukasievich, Esq.

15/  
Janet Zwiebel

Public

15/  
Guy Stewart, Esq.

Industry

Date of Decision: 7-15-93