

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Joseph A. Iatarola,  
Joseph A. Iatarola, IRA,  
Sunset Construction Co. and  
Fay Iatarola

92-02770

Names of Respondents

Rauscher Pierce Refsnes, Inc.,  
Sutro & Co. Incorporated.  
Tucker, Anthony & R.L. Day, Inc. and  
Richard Bellinfante

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REPRESENTATION

Claimants, Joseph Iatarola, Sunset Construction Co. and Fay Iatarola were represented by Robert L. Gugino, Esq. of The Law Offices of Robert L. Gugino, Tucson, Arizona.

Respondent, Rauscher Pierce Refsnes, Inc. were represented by Joel P. Hoxie, Esq. and William N. Poorten III, Esq. of Snell & Wilmer, Phoenix, Arizona.

Respondent, Sutro & Co., Inc. was represented by Michael J. Meehan, Esq. and Mark Dinell, Esq. of Meehan & Associates, Phoenix, Arizona.

Respondent, Tucker, Anthony, Inc. & R.L. Day, Inc. was represented by Patrick J. Howley, Esq., Associate General Counsel of Tucker Anthony, Inc.

Respondent, Richard Bellinfante appeared pro se.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 18, 1992.

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Claimant's Submission Agreements were signed on April 16, 1992, April 17, 1992 and June 4, 1992.

A Statement of Answer and Cross-Claim against Respondent, Richard Bellinfante was filed with the NASD by Respondent, Rauscher Pierce Refsnes, Inc. on October 29, 1992.

Respondent, Rauscher Pierce Refsnes, Inc.'s Submission Agreement was signed on October 23, 1992 by James T. Ritt, Esq., Vice President.

A Statement of Answer, Motion to Dismiss and Motion to Disqualify was filed with the NASD by Respondent, Sutro & Co., Inc. on October 30, 1992.

Respondent, Sutro & Co., Inc.'s Submission Agreement was signed on September 28, 1992 by Mary Jane Delaney, Executive Vice President and General Counsel.

A Statement of Answer was filed with the NASD by Respondent, Tucker, Anthony & R.L. Day on December 11, 1992.

Respondent, Tucker, Anthony & R.L. Day's Submission Agreement was signed on November 25, 1992 by Patrick J. Howley, Vice President and Associate General Counsel.

A Statement of Answer and Response to Rauscher Pierce's Cross-Claim was filed with the NASD by Respondent, Richard Bellinfante on or about February 16, 1993

Respondent, Richard Bellinfante did not file an executed Submission Agreement with the NASD.

Claimants filed an opposition to Sutro's Motion to Dismiss and Motion to Disqualify with the NASD on November 16, 1992.

Rauscher Pierce filed a Response to Bellinfante's Motion to Dismiss the Cross-Claim against him with the NASD on June 28, 1993.

Claimants filed an Amended Statement of Claim with the NASD on December 14, 1993.

### **HEARING INFORMATION**

The hearing was held on April 21, 1993 for one (1) session, February 23, 1994 for two (2) sessions, February 24, 1994 for two (2) sessions, February 25, 1994 for two (2) sessions, and February 26, 1994 for one (1) session.

The hearing location was Scottsdale, Arizona.

### **CASE SUMMARY**

Claimants, Joseph A. Iatarola, Sunset Construction Company and Fay Iatarola ("Claimants") alleged breach of contract, breach of fiduciary duty, breach of regulatory and statutory duties, negligence, gross negligence, and racketeering under Arizona law as a consequence of the stock trading in Claimants' accounts. Specifically, claimants asserted that securities trading accounts were opened with Respondent, Tucker, Anthony & R.L. Day ("Tucker Anthony") with Respondent, Richard Bellinfante ("Bellinfante") acting as the account executive. Later, the Tucson branch of Tucker Anthony was transferred to Respondent, Sutro & Co., Inc. ("Sutro"). Bellinfante then left the employ of Sutro and joined the employ of Respondent, Rauscher, Pierce Refsnes, Inc. ("Rauscher Pierce"). Claimants' accounts shifted to Bellinfante's new employers when he changed companies.

Claimants alleged that they began trading in AT&E common stock based on alleged insider information from one Nick Mammana, who was a director of the company. Claimants alleged that based upon this alleged insider information, they purchased and sold several thousand shares of AT&E. Claimants alleged that the transactions were unsuitable and constituted a breach of Bellinfante's fiduciary obligation to them and that the actions of Bellinfante in allegedly trading on insider information were a breach of federal and state securities laws. Claimants alleged that Sutro, Rauscher Pierce and Tucker Anthony failed to properly supervise Bellinfante and the acts of the collective respondents constituted racketeering.

Rauscher Pierce denied the allegations of the Statement of Claim. Rauscher Pierce alleged that the losses incurred in Claimants' accounts occurred as a result of extensive trading history in the stock of one company, AT&E, that the Claimants began trading in AT&E well before they came to be customers of Rauscher Pierce and that they remained customers well after their trading losses in AT&E. Rauscher Pierce alleged that Claimants were high risk investors with a history of trading in options and new equity issues. Rauscher Pierce

asserted that the Claimants exercised their own discretion in buying and selling AT&E stock and that certain of the purchases were contrary to Bellinfante's recommendations.

Rauscher Pierce asserted a cross-claim against Bellinfante for indemnification in the event an award was entered against Rauscher Pierce in favor of Claimants.

Tucker, Anthony denied the allegations of the Statement of Claim and asserted that the trades in AT&E at Tucker Anthony resulted in a profit to Claimants. Tucker Anthony asserted affirmative defenses including, but not limited to, estoppel, ratification, the claim fails to state a cause of action upon which relief can be granted, waiver, and the claims were barred by the doctrine of laches and applicable statutes of limitation.

Tucker Anthony also asserted a cross-claim for indemnification from Bellinfante in the event an award was entered against Tucker Anthony in favor of Claimants.

Sutro & Co. denied the allegations of the claim and asserted the affirmative defenses of laches, waiver, estoppel and in pari delicto.

Sutro filed a Motion to Dismiss and Motion to Disqualify Claimant's counsel. The basis for the disqualification motion was that Claimants' counsel had a previous attorney client relationship with Bellinfante which would result in a conflict of interest.

Claimants responded to the Motion to Dismiss and Disqualify Counsel by asserting that the contract entered into by Claimants should be governed by Arizona and not New York law. As to the disqualification issue, Claimants asserted that the previous attorney client relationship between Bellinfante and Claimants' attorney was fully disclosed to both parties and they waived any conflict of interest issue.

Bellinfante denied the allegations of the claim and moved to dismiss Rauscher Pierce's cross-claim.

Rauscher Pierce requested that Bellinfante's Motion to Dismiss the cross-claim be denied.

**RELIEF REQUESTED**

Claimants requested compensatory damages, jointly and severally against Respondents in the amount of \$193,690.46, punitive damages, treble damages and an award of attorney's fees and costs to be determined, and in the event of a default, in the amount of \$50,000.00.

Rauscher Pierce requested dismissal of the claim and an award of costs and reasonable attorney's fees incurred in the matter. Rauscher Pierce requested indemnity from Bellinfante by virtue of a cross-claim against him in the event any award was entered in Claimants' favor.

Tucker Anthony requested dismissal of the claim or in the alternative, indemnity from Bellinfante by virtue of a cross-claim.

Sutro requested dismissal of the claim.

Bellinfante requested dismissal of the claim and Rauscher Pierce's cross-claim.

**OTHER ISSUES CONSIDERED & DECIDED**

At the hearing on April 21, 1993, the arbitration panel considered oral argument on Sutro's Motion to Disqualify Claimants' counsel. The panel determined to disqualify Claimants' counsel and adjourned the hearing until such time as Claimants could obtain substitute counsel.

At the hearing on February 23, 1994, the panel recognized that Respondent, Calista Bellinfante was removed from the proceeding by the NASD for lack of personal jurisdiction. All parties consented on the record to this action in regard to Respondent, Calista Bellinfante.

Claimants voluntarily dismissed Counts, 3 and 6 of the Statement of Claim filed in this matter by letter dated December 9, 1993 from Claimants' counsel, Robert L. Gugino, Esq.

Sutro and Tucker Anthony filed Motions to Dismiss the claim as against them. The panel took no action on these Motions, as at hearing on February 26, 1994 and prior to issuance of a ruling, Claimants voluntarily dismissed, with prejudice, all claims asserted against Tucker Anthony and Sutro. Accordingly, the panel only considered Claimants' claims against Rauscher Pierce and

and Bellinfante and Rauscher Pierce's cross-claim against Bellinfante.

Claimant, Fay Iatarola did not appear at the hearing in person, having been represented by counsel, Robert L. Gugino, Esq.

The 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.

#### **AWARD**

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

1. Claimants' claim asserted against the remaining Respondents, Rauscher Pierce and Bellinfante is dismissed in its entirety;
2. Rauscher Pierce's cross-claim asserted against Bellinfante is dismissed as moot; and,
3. Other than Forum Fees which are addressed below, the parties shall each bear their respective costs and attorney's fees.

#### **FORUM FEES**

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$250.00 non-refundable claim filing fee and the \$1000.00 hearing session deposit previously made with the NASD by Claimants. The NASD shall also retain the \$250.00 non-refundable cross-claim filing fee paid to the NASD by Rauscher Pierce and the \$250.00 non refundable cross-claim filing fee paid to the NASD by Tucker Anthony. The NASD will refund the \$600.00 hearing session deposit paid to the NASD by Rauscher Pierce.

The NASD will also retain the \$500.00 postponement fee paid to the NASD By Sutro and the \$500.00 postponement fee paid to the NASD by Rauscher Pierce for the postponement of a previously scheduled hearing date.

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Additional Forum Fees in the amount of \$7000.00 are assessed against Claimant, Joseph Iatarola and are payable to the National Association of Securities Dealers, Inc. Forum Fees were assessed at the rate of \$1000.00 per hearing session for eight (8) hearing sessions.

**Concurring Arbitrators' Signatures**  
**Name**

/s/ Irving Lowe  
Irving Lowe, Esq.  
Presiding Chairperson  
Public Arbitrator

May 20, 1994  
Dated

/s/ Louise Wakem  
Louise Wakem  
Panelist  
Public Arbitrator

May 20, 1994  
Dated

/s/ Harry Hamilton Herts  
Harry Hamilton Herts  
Panelist  
Industry Arbitrator

May 23, 1994  
Dated

Date Award Served on the Parties by the NASD: May 31, 1994