

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

Fargo MFG. Co., Inc.

92-03737

Halpert & Co., formerly known as Halpert, Oberst and Company  
Richard M. Bergstein

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**REPRESENTATION**

For Claimant: Timothy P. Kebbe, Esq. of the Firm Wien, Malkin & Bettex, located in New York, New York.

For Respondent Halpert & Co., Inc.: Anthony W. Djinis, Esq. of the Firm Pickard and Djinis, located in Washington, D.C.

For Respondent Richard M. Bergstein: Respondent Richard M. Bergstein did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim filed: October 30, 1992

Claimant's Submission Agreement signed on: October 22, 1992

Respondent Halpert & Co., Inc.'s Statement of Answer filed: February 8, 1993

Respondent Halpert & Co. Inc.'s Submission Agreement signed on: February 8, 1993

Respondent Richard M. Bergstein's Statement of Answer filed: Respondent Richard M. Bergstein did not file a Statement of Answer as required pursuant to Section 25(b)(1) of the NASD Code of Arbitration Procedure.

Respondent Richard M. Bergstein's Submission Agreement signed on: Respondent Richard M. Bergstein did not sign a Submission Agreement as required pursuant to Section 25(b)(1) of the

Page 2

NASD Award #92-03737

NASD Code of Arbitration Procedure.

### **HEARING INFORMATION**

Pre-Hearing Conference: April 28, 1994 / 1 Session.

Hearing Dates / Sessions: September 13, 1994 / 2 Sessions.  
September 14, 1994 / 2 Sessions.  
November 16, 1994 / 2 Sessions.  
March 14, 1995 / 2 Sessions.  
March 15, 1995 / 2 Sessions.  
April 10, 1995 / 2 Sessions.

Hearing Location: Offices of the National Association of Securities Dealers, Inc. New York City, New York.

### **CASE SUMMARY**

Claimant, Fargo MFG. Co., Inc. ("Fargo"), alleged that Halpert & Co., Inc. ("Halpert"), acting by and through Respondent Richard M. Bergstein ("Bergstein"), engaged in fraudulent and unlawful practices in connection with claimants account by: (a) removing \$100,000 worth of municipal bonds issued by the cities of Detroit and Philadelphia and converting them for their own use; (b) failing to provide claimant with the competent and professional services; and (c) failing to establish and implement appropriate supervisory procedures.

Claimant alleged that Bergstein, and other as yet unnamed individuals did unlawfully, willfully and knowingly combine, confederate, conspire and agree together and with each other to conduct and participate, directly and indirectly, in the conduct of the officers of the enterprise through a pattern of racketeering activity. Claimant alleged that Respondents engaged in Mail Fraud in violation of Title 18, United States Code, Section 1341. Claimants further allege that respondents used or caused to be used interstate wire communications in violation of Title 18, United States Code, Section 1343.

Claimants also alleged that Halpert's actions through Bergstein and others constitutes a breach of fiduciary duty, breach of contract, and several violations of NASD Rules of Fair Practice including; High Standards of Commercial Honor and Just and Equitable Principles of Trade; Suitability; Use of Fraudulent Devices; and Failure to Supervise.

Respondent Halpert maintained that it issued to Fargo a monthly statement for February 1986 which reflected the delivery of the city of Detroit Bonds by Halpert to Fargo Manufacturing.

During the entire period that Fargo Manufacturing maintained its account at Halpert & Co., the company never once lodged any complaint against Respondent Bergstein. Respondent Halpert further maintained that it issued to Fargo a monthly statement of October 1986 which reflected the delivery of the Philadelphia bonds to Fargo. Respondent further alleges that Fargo never once advised Halpert that the bonds were lost, misplaced or stolen. Respondents assert that had they been afforded timely notice that they could have taken actions necessary to avoid loss to Fargo.

Respondent Halpert asserted affirmative defenses including: (a) more than six years have elapsed; (b) the Statement of Claim fails to state a claim upon which relief may be granted; (c) the claim is barred by the statute of limitations; (d) damages were caused in whole or in part by the negligence and lack of due care of the Claimant; (e) damages were solely and proximately caused by the independent, supervening and/or intervening act of claimant; (f) Claimant, by its conduct, is barred under the conduct of waiver, estoppel, laches and/or unclean hands; (g) Claimant failed to mitigate damages.

#### **RELIEF REQUESTED**

Claimant requested:

- (a) \$100,000 for conversion of the bonds;
- (b) Actual damages in an amount to be determined upon the proof of specific damages presented to the arbitration panel;
- (c) Treble damages in an amount to be determined upon the proof of specific damages under the RICO claims of action;
- (d) Claimant's costs, disbursements, including reasonable attorneys' fees;
- (e) Such other and further relief as the arbitration panel deems just and proper.

Respondent Halpert requested:

- (a) That the Statement of Claim be dismissed in all respects;
- (b) That Halpert be awarded costs and expenses, including reasonable attorney's fees and further relief that is just and proper.

**OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings concerning Respondent Bergstein who did not file a Statement of Answer and a Submission Agreement, and who also failed to appear at the hearings conducted in this matter:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that the Respondent Bergstein was an associated person of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Respondent Bergstein pursuant to Section 12 of the NASD Code of Arbitration Procedure.
3. In view of (2) above, the panel found that Respondent Bergstein was required to file with the NASD a statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon Respondent Bergstein, via certified mail, pursuant to Section 25(a) of the Code.
4. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of Arbitration Procedure, the panel found that the NASD provided Respondent Bergstein with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Respondent Bergstein whose absence was unexcused.

Respondent Halpert moved to dismiss Claimant's claim pursuant to Sections 15 and 6 of the NASD Code of Arbitration Procedure. Claimant's Claims against Respondent Halberd and/or Respondent Richard. M. Bergstein based upon occurrences or events prior to October 22, 1986 were found to be ineligible for submission to arbitration. That part of Halpert's application requesting relief under Code Section 6 was denied.

**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:

- (1) Claimant's Claims against Halpert & Co. are dismissed in their entirety.
- (2) Respondent Bergstein is liable and shall pay to Claimant the sum of \$100,000 with interest at nine percent (9%) per annum from October 22, 1986.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 pre-hearing session X \$300 = \$300

12 hearing sessions X \$750 = \$9,000

Less hearing session deposit of \$750 paid by Claimant = net \$8,550 due.

1. Claimant is assessed the sum of \$4,650 which represents one-half of the total forum fees due, less \$750 hearing session deposit paid by Claimant, leaving \$3,900 due. Claimant is liable and shall pay to the NASD the sum of \$3,900.
2. Respondents Halpert and Bergstein are assessed the sum of \$4,650 which represents one-half of the total forum fees due. Respondents Halpert and Bergstein are liable jointly and severally and shall pay to the NASD the sum of \$4,650.

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

Page 6

NASD Award #92-03737

Concurring Arbitrators' Signatures

Name



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Robert Pincus, Esq.  
Public Chairperson

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Robert B. Weintraub, Esq.  
Public Panelist

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David Hirschberg, Esq.  
Industry Panelist

Date of Decision: August 11, 1995

Page 6

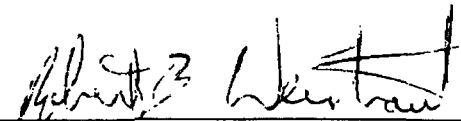
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