

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph L. Artiga
Joseph M. Artiga
Bamfec Corp.
Conitex USA, Inc.

92-04010

Name of Respondents

Prescott, Ball & Turben, Inc.
Donald A. Ballarini

REPRESENTATION

For Claimants: David Furr, Esq.

For Respondents: Daniel Roy, Esq. of Coffield Ungaretti & Harris.

CASE INFORMATION

Statement of Claim filed: November 25, 1992.

Claimant, Joseph L. Artiga's Submission Agreement signed on: November 23, 1992.

Claimant, Joseph M. Artiga's Submission Agreement signed on: November 23, 1992.

Claimant, Bamfec Corp's Submission Agreement signed on: November 23, 1992.

Claimant, Conitex USA's Submission Agreement signed on: November 23, 1992.

Joint Statement of Answer filed by Respondent Donald A. Ballarini and Kemper Securities, Inc., successor by merger to Prescott, Ball & Turben, Inc. on: January 26, 1993.

Respondent, Prescott, Ball & Turner, Inc.'s Submission Agreement signed on: January 25, 1993.

Respondent, Donald A. Ballarini's Submission Agreement signed on: January 25, 1993.

HEARING INFORMATION

Pre-Hearing Conferences: February 7, 1994/One session
February 9, 1994/One session

Hearing Dates/Sessions: February 15, 1994/Two sessions
February 16, 1994/Two sessions

Hearing Location: Charlotte, North Carolina.

CASE SUMMARY

Claimants allege that Respondent Donald Ballarini ("Ballarini") called Claimant Joseph L. Artiga ("J.L. Artiga") and recommended the purchase of as much AMI International ("AMI") stock as possible. Claimants further allege that Respondents Ballarini and Respondent Prescott, Ball & Turben, Inc. ("PBT") fraudulently, negligently, unfairly and deceptively represented that AMI was a solvent company, a liquid investment and a blue chip stock. Claimants further allege that Respondents Ballarini and PBT failed to review the suitability standards for an investment in AMI and that Respondent PBT failed to supervise Respondent Ballarini. Claimants further allege that they collectively purchased \$210,000 of AMI stock on this recommendation and that, since 1990, Respondent Ballarini continued to urge them to hold this stock.

Respondents admit that Respondent Ballarini solicited Claimant A.L. Artiga to purchase AMI stock, but deny that he characterized AMI as a blue chip stock and misrepresented the riskiness of AMI. Respondents also maintain that Claimant J.L. Artiga was not a newcomer to speculative trading and was a man of substantial means, who controlled at least one of the corporate Claimants. Respondents further maintain that Respondent Ballarini kept Claimants informed of the relevant news regarding AMI and Claimants, therefore, had all of the information necessary to make an informed decision whether or not to continue to hold AMI. Respondents also maintain that in July, 1991, Respondent Ballarini left PBT to become an investment broker at Prudential Securities and that Claimants transferred their accounts to Prudential. Respondents maintain that Claimants' alleged damages were caused by factors over which Respondents had neither responsibility nor control. Respondents further maintain that Claimants' claims are barred by ratification, waiver and failure to mitigate damages.

Respondents also maintain that Claimants' request for punitive damages is contrary to law and not warranted by the facts alleged in this arbitration.

RELIEF REQUESTED

Claimants request an award of damages for the losses from the investment and cash flow difficulties caused by the illiquidity of the investment, punitive damages and whatever other damages that are available for unfair and deceptive trade practices, including treble damages.

Respondents request that the Statement of Claim be dismissed in its entirety and that they be awarded costs and attorneys' fees.

AWARD

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

- a) Claimants' claim for damages is hereby denied.
- b) Claimants' claim for punitive damages is hereby denied.
- c) Claimants' claim for treble damages is hereby denied.
- d) The parties shall bear their respective costs, including attorneys' fees.

FORUM FEES

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

2 pre-hearing conferences X \$300 = \$600 plus 4 sessions X \$1000 = \$4,600
minus Claimants' hearing session deposit of \$1000 = net \$3,600 due.

Respondents, Donald Ballarini and Prescott, Ball & Turben, Inc. are hereby jointly and severally liable and shall pay to the NASD, Inc. forum fees in the amount of \$2,300.00.

Claimants are hereby jointly and severally liable and shall pay to the NASD, Inc. forum fees in the amount of \$1,300.00.

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

Page 4
Award #92-04010

Concurring Arbitrators' Signatures
Name

John F. Snyder
John F. Snyder, Esq.

David S. Foster
David S. Foster

James R. Shields
James R. Shields

Public/Industry

Chair/Public

Public

Industry

Date of Decision: April 14, 1994