

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

C. Joseph Rubis

93-00531

Name of Respondents

D.H. Blair & Company
John Steinmetz
Barclay Investments Inc.
Global Financial Group Inc.

REPRESENTATION

For Claimant C. Joseph Rubis ("Claimant"): Stuart Kaufman, Esq., of the law firm of Fisch & Kaufman, P.C., New York, New York.

For Respondent D.H. Blair & Company ("D. H. Blair"): Todd C. Steckler, Esq., of the law firm of Bachner, Tally, Polevoy & Misher, New York, New York.

For Respondent John Steinmetz ("Steinmetz"): Stephen L. Ratner, Esq., of the law firm of Rosenman & Colin, New York, New York.

For Respondent Barclay Investments Inc. ("Barclay"): Michael J. McGovern, Esq., Barclay Investments Inc..

For Respondent Global Financial Group Inc. ("Global"): President Compliance, Global Financial Group Inc., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed: February 11, 1993.

Claimant's Submission Agreement signed on: June 1, 1992.

Respondent D. H. Blair's Statement of Answer, Cross-Claim and Counterclaim filed on:

April 28, 1993.

D. H. Blair's Submission Agreement signed on: April 22, 1993.

Respondent Steinmetz's Statement of Answer filed on: April 12, 1993.

Respondent Steinmetz's Statement of Reply to Crossclaim of D.H. Blair filed on: May 11, 1993.

Respondent Steinmetz's Statement of Reply to Crossclaim of Barclay filed on: April 28, 1993.

Steinmetz's Submission Agreement signed on: April 5, 1993.

Respondent Barclay's Statement of Answer and Crossclaim filed on: April 12, 1993.

Respondent Barclay's Statement of Reply to Crossclaim of Steinmetz filed on: May 3, 1993.

Respondent Barclay's Statement of Answer to Crossclaim of D.H. Blair filed on: May 3, 1993.

Barclay's Submission Agreement signed on: March 31, 1993.

Respondent Global did not submit a Statement of Answer nor a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: June 23, 1994 - two sessions
 May 26, 1994 - two sessions
 May 25, 1994 - two sessions

Hearing Location: Omni Inner Harbor Hotel, Baltimore, Maryland

CASE SUMMARY

Claimant alleged, among other things, that he is an unsophisticated investor who was "cold-called" by Steinmetz. Claimant alleged that he kept his account with Steinmetz as Steinmetz transferred employment between D. H. Blair, Barclay and Global. Claimant alleged that Steinmetz falsely represented himself as a trained engineer with an ability to evaluate high technology companies. Claimant alleged that Steinmetz claimed that his on-site visits to these high technology companies allowed him to assess their technical aspects in order to confirm their value. Claimant alleged that Steinmetz misrepresented the risks of investing in these companies. Claimant alleged that Steinmetz refused to follow direct sell orders and made unauthorized trades in Claimant's account. Claimant alleged that Steinmetz made false projections of the growth and profit potential of these companies to induce Claimant to invest in them. Claimant alleged that D. H. Blair, Barclay and Global cooperated and connived with Steinmetz in making these false projections. Claimant further alleged that the investments were in companies that were

artificially supported by D. H. Blair, Barclay and Global.

Steinmetz, D. H. Blair and Barclay (collectively referred to as "Respondents"), categorically denied all allegations of wrongdoing.

Steinmetz maintained that Claimant is a sophisticated, knowledgeable and experienced investor who had extensive investment experience prior to the time he met Steinmetz. Steinmetz maintained that during the relevant period he was employed by D. H. Blair and Barclay, not Global. Steinmetz maintained that Claimant approved, authorized, and ratified all trades in his account. Steinmetz maintained that all risks were properly disclosed to Claimant, and he knowingly, willingly and voluntarily decided to assume those risks. Steinmetz denied that he used technical engineering expertise in making investments. Steinmetz maintained that he and Claimant shared a buy and hold approach to investment seeking longterm appreciation. Steinmetz maintained that Claimant's claims are barred by the applicable statute of limitations and further that they fail to state a cause of action upon which relief may be granted. Steinmetz maintained that Claimant is not entitled to punitive damages as a matter of law.

D. H. Blair maintained that Claimant makes no allegations concerning any acts, failures to act, misrepresentations or omissions undertaken by D. H. Blair which resulted in any damage to the Claimant. D. H. Blair maintained that Claimant was an experienced investor who assumed the risks of investing in the securities market. D. H. Blair maintained that the investments in Claimant's account were suitable given Claimant's disclosed financial position. D. H. Blair maintained that at the time Claimant's account was transferred out of D. H. Blair, he had a profit of approximately \$130,000. D. H. Blair maintained that Claimant is precluded from claiming punitive damages under New York law. D. H. Blair maintained that Claimant had full knowledge of all material facts concerning his accounts. D. H. Blair maintained that all claims are barred by the doctrines of waiver and ratification, as Claimant failed to raise any objection to D. H. Blair of any mishandling of his account.

Barclay maintained that Steinmetz was associated with Barclay during the relevant period. Barclay maintained that one transaction in Claimant's claim was associated with Barclay. Barclay maintained that the nature and degree of risk involved in the purchase of convertible preferred stock in Personal Computer Products, Inc. at the private offering was fully disclosed to the Claimant. Barclay maintained that the Claimant was provided with a copy of the Private Placement Memorandum at the time of the investment. Barclay maintained that Claimant indicated on his Subscription Agreement Form sufficient investment sophistication and financial eligibility to make this transaction suitable. Barclay denied that any

company in which Claimant invested was artificially supported by Barclay. Barclay maintained that there was a lack of principal-agency relationship between Steinmetz and Barclay and further that Steinmetz acted beyond the scope of his authority while associated with Barclay. Barclay claimed that Claimant's claim for damages is limited to his alleged trading loss of \$61,003.69 on the Personal Computer Products, Inc. stock.

D. H. Blair alleged in a counterclaim that Claimant's claim contains defamatory statements about D. H. Blair that have no basis in fact. D. H. Blair alleged that these statements could only have been included for the willful, deliberate, wanton, and malicious purpose of damaging D. H. Blair's reputation and obtaining a monetary settlement.

Steinmetz in crossclaim alleged, among other things, that to the extent he is liable for any damages allegedly suffered by Claimant, the other Respondents were the direct and immediate cause of such damage and therefore substantially more culpable than Steinmetz.

Barclay categorically denied each and every allegation contained in Steinmetz's crossclaim. Barclay maintained that the claim is barred by the applicable state and/or federal statutes of limitation. Barclay maintained that to the extent Claimant suffered any losses, such losses were caused solely and proximately by the acts of Steinmetz while he was associated with another Respondent and/or outside the scope of any authority conferred upon him by Barclay.

D. H. Blair alleged, among other things, that to the extent that Claimant suffered any damages other than by Claimant's own behavior, and D. H. Blair is found liable, such damage was the proximate result of acts, omissions and conduct by cross-claim respondents Barclay, Steinmetz or Global and not D. H. Blair.

Steinmetz categorically denied each and every allegation contained in D. H. Blair's crossclaim. Steinmetz denied that he acted wrongfully and/or outside his scope of his authority at any time.

Barclay categorically denied each and every allegation contained in D. H. Blair's crossclaim. Barclay maintained that D. H. Blair's crossclaim is barred by the applicable state and/or federal statutes of limitations. Barclay maintained that D. H. Blair has failed to state any legal theory under which it is entitled to any contribution or indemnification from Barclay.

Barclay alleged, among other things, that to the extent Claimant was damaged by

the acts and/or omissions of Steinmetz while Steinmetz was associated with Barclay, such acts were intentional and/or were committed outside the scope of any authority that may have been conferred upon Steinmetz by Barclay. Barclay alleged that if Barclay is found liable to the Claimant, Barclay is entitled to indemnification from Steinmetz.

Steinmetz categorically denied each and every allegation contained in Barclay's crossclaim except admits that he was associated with Barclay during the relevant period. Steinmetz denied that he acted wrongfully and/or outside his scope of his authority at any time.

RELIEF REQUESTED

Claimant requested damages of \$1,760,972, plus interest, based on: \$710,972 in trading losses; \$50,000 in attorneys' fees; and punitive damages of \$1,000,000.

Respondents requested that Claimant's claim be dismissed in its entirety and that Panel award Respondents all costs and fees associated with defending this claim.

D. H. Blair in counterclaim requested damages in a sum to be determined by the arbitrators, but not less than \$10,000, and all costs and attorneys' fees for this matter.

Steinmetz requested in a crossclaim that he be awarded indemnification and/or contribution from each of the Respondents.

Respondents D. H. Blair and Barclay requested that Steinmetz's cross claim be dismissed int its entirety.

D. H. Blair requested in a crossclaim that he be awarded indemnification and/or contribution from each of the cross-claim respondents, both jointly and severally.

Steinmetz requested that D. H. Blair's crossclaim be dismissed in its entirety and that Panel award all costs and fees associated with defending this claim.

Barclay requested that D. H. Blair's crossclaim be dismissed in its entirety.

Barclay requested that to the extent it is found liable to the Claimant, that

Steinmetz be adjudged liable to Barclay for indemnification in full.

Steinmetz requested Barclay's crossclaim for indemnification be dismissed in its entirety and that Panel award all costs and fees associated with defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

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 original remains on file with the NASD.

1. Claimant's claim against Barclay was settled on May 24, 1994.
2. The Panel dismissed Respondent D. H. Blair prior to rendering its decision.

AWARD

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

1. All Claimant's claims are denied in their entirety.
2. Any and all crossclaims and counterclaims not withdrawn are denied in their entirety.
3. Claimant's claim for punitive damages is denied in its entirety.
4. The parties shall bear their own costs, including attorneys' fees except as provided below.

FORUM FEES

Pursuant to Section 43c/44 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

6 Sessions X \$1,000 = \$6,000

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Forum Fees Assessed Against Claimants. Claimant is assessed Forum Fees in the Amount of \$6,000, however, Claimant is entitled to offset this amount with his hearing session deposit of \$1,000 and the hearing session deposits of Respondents which amount to \$2600, so the amount due from Claimant to the NASD as Forum Fees is \$2,400. Claimant is directed to fully refund Respondents directly for their hearing session deposits as follows: \$1,000 to Barclay; \$1,000 to D. H. Blair; and \$600 to Steinmetz.

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

Concurring Arbitrator's Signature

Name


Gordon F. Linke

Public/Industry



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Concurring Arbitrator's Signature
Name

Public/Industry


Sandra Lee Dolan

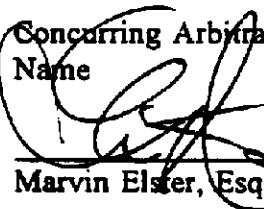
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Concurring Arbitrator's Signature
Name


Marvin Elster, Esq.

Public/Industry

PUBLIC

NASD Date of Decision: July 29, 1994