

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Sheldon B. and Marcia Lantinberg

Case No. 94-01223

**Name of Respondents**

Royce Investment Group, Inc.  
Royce Kanofsky  
John Arturo Marciano

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**REPRESENTATION**

For Claimants, Sheldon and Marcia Lantinberg ("Lantinbergs"): George E. Ridge, Esq. of Kent, Ridge & Crawford, Jacksonville, Florida.

For Respondents, Royce Investment Group, Inc. ("Royce"), Royce Kanofsky ("Kanofsky") and John Arturo Marciano ("Marciano"): Stephen L. Ratner, Esq. of Rosenman & Colin, New York, New York.

**CASE INFORMATION**

Statement of Claim filed: March 30, 1994. Claimants' Submission Agreement signed: March 17, 1994.

Respondents' Joint Statement of Answer filed: September 29, 1994. Respondents' Submission Agreements signed: September 21, 1994 by Kanofsky, Marciano, and by Edward L. Rose on behalf of Royce.

**HEARING INFORMATION**

On April 28, 1995 in Fort Lauderdale, Florida a Pre-Hearing Conference lasting 1 session was conducted, via telephone conference call, with an arbitrator.

On June 12 and 13, 1995, in Fort Lauderdale, Florida, a hearing lasting 4 sessions was conducted.

## **CASE SUMMARY**

Claimants alleged that in April, 1991, Respondents engaged in a device, scheme and artifice to defraud the Claimants, when Respondents purchased 600,000 shares of Plastigone Technologies, Inc. common stock for 16.7 cents per share from Claimants at a time when the market price of the stock ranged between \$0.875 and 1.375 per share; that Marciano acquired 290,000 of the shares at 16.7 cents and ultimately realized a gain of \$273,081.40; that four other individuals acquired the remaining 310,000 shares, and that they too made significant gains on the trade; that both parties concede that absent consent of Royce, the stock was "restricted" from public sale pursuant to a contract between the parties; that despite this "restriction" from sale on the stock, when Respondents purchased the stock and transferred shares to other individuals, the stock was unrestricted; that the restriction in the Lantinbergs' hands but not in the hands of the buyers is evidence of unreasonable conduct; that Respondents further induced the Lantinbergs to sell for 16.7 cents a share through threats, intimidation, and by imposition of unreasonable conditions (i.e. sale of all or none of the stock, refusal to "unrestrict" a portion of the stock, threats concerning Royce's ability to control price, and threats to destroy the stock's value); that Respondents committed further fraud and violation of 10b-5 by their failure to inform the Lantinbergs that Kanofsky and Maricano were the intended purchasers of the stock, a material fact which Lantinberg would reasonably have believed and which would have impacted the decision to sell; and, that Respondents failed to report the trade to the NASD and ultimately the public, an action which is a violation of NASD rules and part and parcel of Respondents' device, scheme and artifice to defraud the Lantinbergs.

Respondents denied all allegations of wrongdoing and alleged that they acted properly and did not violate any statutory, regulatory or other standard; that Lantinberg approached them to sell his shares which were subject to restriction on public sale; that Lantinberg was not, and could not have been misled as to the value of his shares because, among other reasons, he had very recently been fired as the President and CEO of Plastigone, had intimate knowledge of Plastigone and its financial problems, the thin market for Plastigone stock, and the price at which the shares traded; and, that Lantinberg solicited and received other offers which were lower than the offer he accepted, and he was fully informed of all essential facts when he accepted the offer on his shares. Respondents alleged the affirmative defenses of failure to state a cause of action; ratification; waiver; estoppel; laches; statute of limitations; and, that the cause of action for breach of fiduciary duty was barred as a matter of fact and law.

## **RELIEF REQUESTED**

Claimants requested damages of \$565,140.00 for lost profits plus pre-judgment interest of \$187,284.85 for a total of \$752,425.85, plus punitive damages, attorney's fees, treble damages and costs.

Respondents requested dismissal of the Claim, costs and expenses.

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

1. During the hearing, the Claimants withdrew their Section 10(b)(6) Claims comprising Counts I and II of the Statement of Claim.
2. At the close of Claimants' case, Respondents moved for Dismissal which was denied by the Panel.
3. 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' requests for attorney's fees, costs, expenses, punitive and treble damages are denied.
3. Respondents' requests for costs and expenses are denied.

### **OTHER COSTS**

None.

### **FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,300.00 (1 pre-hearing x \$300.00 plus 4 sessions x \$750.00).
2. Claimants are hereby assessed \$4,300.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof, leaving a balance of \$3,300.00 payable to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

  *JS*    
Nancy J. Cliff, Esq.

Public

  *JS*    
Elaine Feldman, Esq.


Public

  *JS*    
Sanford M. Naiditch

Industry

Date of Decision:   *7/6/95*


Concurring Arbitrators' Signatures  
Name

  
William Friedman, Esq.

Public

**AFFIRMATION**

I, William Friedman, Esq., do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
William Friedman, Esq.

Date of Decision: Executed on 11/29/95  
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Date of Decision: November 29, 1995