

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Kurt Markstein

NASD
#94-01588

vs.

Name of Respondents

M.S. Farrell & Company, Inc.,
Robert Deery
Thomas Gallo

REPRESENTATION

Claimant represented himself.

For Respondents: Mark J. Astarita, Esq., Gusrae, Kaplan & Bruno, New York, New York

CASE INFORMATION

Statement of Claim filed: May 10, 1994

Claimant's Submission Agreement signed: May 9, 1994

Joint Statement of Answer filed: September 27, 1994

Amended Answer & Counterclaim filed: March 23, 1995

Respondents Submission Agreements signed: None submitted

HEARING INFORMATION

A pre-hearing telephone conference was held on February 27, 1995, and lasted one session.

The evidentiary hearing was held in San Francisco, California on April 3, 1995, and lasted two sessions.

CASE SUMMARY

Claimant alleged failure to execute, breach of fiduciary duty and negligence in connection with his investments in the common stock of FWST.

Respondents denied all allegations, and asserted that Claimant is an experienced and knowledgeable investor who complained only when his investments were not profitable.

Respondents counterclaimed for damages sustained in defending against spurious claims.

RELIEF REQUESTED

Claimant requested damages of \$28,000. Respondents requested dismissal of Claimant's claims, and requested an award of \$25,000 on the counterclaim.

OTHER ISSUES

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.

AWARD

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

The arbitrator has carefully considered the evidence and testimony presented by both sides to this action. Having confirmed that both sides felt they had an adequate and equal opportunity to be heard, the arbitrator finds against Claimant and in favor of Respondent as regards

Claimant's allegations of wrongdoing by M.S. Farrell & Co., Rob Deery and Thomas Gallo.

The arbitrator finds in favor of Respondent M.S. Farrell on its counter-claim and awards Respondent \$2,500.00

FORUM FEE

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$100 non-refundable filing fee paid by Claimant.

Claimant is assessed forum as follows:

2 sessions @ \$300/session	\$600
credit for Deposit	<u>300</u>
	\$300

Fees are payable to the NASD, Inc.

ARBITRATOR

<u>Name</u>	<u>Public / Industry</u>
Steven D. Wasserman	Public


Steven D. Wasserman

Date of Decision: 4/25/95

Date Served: 05/04/95