

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Anthony Porco

94-01774

Name of Respondent(s)

Lew Lieberbaum & Co., Inc.  
Camelot Investment Corporation  
Daniel Dunphy  
John Fasano

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**REPRESENTATION**

For Claimant Anthony Porco: Joseph F. Keenan, Esq., of the law firm of Bochat and Keenan, P.C. Garden City, New York.

For Respondent Lew Lieberbaum & Company, Inc.: Lawrence P. Sandor, Esq. in-house counsel at Lew Lieberbaum & Company, Inc.

For Respondent Camelot Investment Corporation John Fasano, President of Camelot Investment Corp.

Respondent John Fasano appeared pro se.

Respondent Daniel Dunphy appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on: May 11, 1994.

Claimant's Submission Agreement was signed on: May 4, 1994.

Statement of Answer filed by Respondent Lew Lieberbaum & Company, Inc. on: August 30, 1994.

Respondent Lew Lieberbaum & Company, Inc.'s Submission Agreement signed on: August 29, 1994.

Respondent Daniel Dunphy's Submission Agreement signed on: June 22, 1995.

Respondent John Fasano's Submission Agreement signed on: June 22, 1994.

Respondents Daniel Dunphy and John Fasano did not submit a Statement of Answer as required by Section 25(b)(1) of the NASD Code of Arbitration Procedure (the "Code").

Respondent Camelot Investment Corporation did not execute a Submission Agreement or submit a Statement of Answer as required by Section 25 of the Code.

### **HEARING INFORMATION**

Hearing Dates/Sessions:     June     21, 1995 - Two Sessions  
   June     22, 1995 - Two Sessions  
   October 30, 1995 - Two Sessions

Hearing Location: NASD offices located in New York City, New York.

### **CASE SUMMARY**

Claimant alleged that Respondents Daniel Dunphy ("Dunphy") and John Fasano ("Fasano") made misrepresentations to induce Claimant to purchase unsuitable investments for his account. Additionally, Claimant alleged that Respondents Lew Lieberbaum & Company, Inc. ("Lieberbaum") and Camelot Investment Corporation ("Camelot") (both former employers of Dunphy) failed to adequately maintain and enforce a system of internal supervision over its employees, failed to inquire about Claimant's investment objectives and to fully explain the risks of and nature of Claimant's investments. Moreover, Claimant alleged that Respondents breached the fiduciary and contractual duties owed to Claimant and committed common law fraud through their improper actions.

Specifically, Claimant alleges Respondent Dunphy made misrepresentations to Claimant to induce him to buy 5,000 shares in Personal Computer Products, Inc. while Dunphy was employed at Best Investors. Claimant alleged that Dunphy made misrepresentations to Claimant to induce him to purchase shares of Kitchen Bazaar Preferred, International Bankcard Services and Work Recovery Inc. Claimant further alleged that these investments were not suitable for him and that Dunphy did not properly inform him about the risks of these investments.

Claimant alleged that in February 1992, he transferred his accounts to Lieberbaum when Dunphy changed firms and joined Lieberbaum. Claimant alleged that while his account was at Lieberbaum, Dunphy and Fasano made misrepresentations and omissions to induce Claimant to purchase 8,700 shares of Future Medical Products Inc. in which he incurred a loss of approximately \$33,088.62. Furthermore, Claimant also alleged that Dunphy recommended unsuitable investments to him while Dunphy was working at Camelot Investment Corp.

In addition, Claimant alleged that in March 1993 Dunphy changed firms to begin employ with Camelot and that Dunphy continued to recommend that Claimant make speculative investments.

Finally, Claimant alleged that Lieberbaum and Camelot failed to adequately supervise Dunphy and knew or should have known of Dunphy's misrepresentations. Moreover, Claimant also alleges that the Respondents should have inquired about Claimant's investment objectives before they made any investment recommendations to the Claimant.

Respondent Lieberbaum denies all the allegations made against it by Claimant. Lieberbaum maintained that Claimant failed to notify its Compliance Department about Fasano's or Dunphy's improper actions and that Claimant voluntarily transferred this account with Dunphy to Camelot Investment Corporation in order to continue doing business with Dunphy. Additionally, Lieberbaum also contends that since Claimant authorized every transaction in his account, Claimant should be barred from asserting that the transactions were unsuitable.

Respondents Daniel Dunphy, John Fasano and Camelot Investment Corp. did not file an answer to the Statement of Claim.

**RELIEF REQUESTED**

Claimant requested:

- 1) Judgement against Respondents jointly and severally in excess of \$60,000.00;
- 2) Attorneys' fees;
- 3) Interest;
- 4) Costs and disbursements; and,
- 5) All other relief that the arbitrators may deem just and proper.

Respondent Lew Lieberbaum requested:

- 1) Dismissal of all claims;
- 2) All expenses costs and attorneys' fees; and,
- 3) Any other relief that the arbitrators deem proper.

**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, Lew Lieberbaum & Company, Inc., Camelot Investment Corporation and John Fasano be and hereby are jointly and severally liable and shall pay to Claimant the sum of \$8000.00, excluding prejudgment interest;
- 2) All claims asserted against Daniel Dunphy are dismissed;
- 3) All parties are to bear their respective costs, including attorney's fees;
- 4) Respondents, Lew Lieberbaum & Company, Inc., Camelot Investment Corporation and John Fasano be and hereby are jointly and severally liable and shall pay to Claimant the sum of \$500.00 as reimbursement for the hearing session deposit paid by the Claimant; and,
- 5) All other requests for relief are denied.

**FORUM FEES**


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

Forum Fees: \$3000.00 (6 Sessions x \$500)

- 1) Respondents, Lew Lieberbaum & Company, Inc., Camelot Investment Corporation and John Fasano are assessed \$3000.00 representing total forum fees due, less \$500.00 previously paid, leaving \$2500.00 due. Respondents, Lew Lieberbaum & Company, Inc., Camelot Investment Corporation and John Fasano be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$2500.00

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

**ARBITRATOR'S SIGNATURE**

  
David Fogel, Esq. - Chairperson  
Public Arbitrator

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Robert A. Castillo  
Public Arbitrator

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James J. Noone  
Industry Arbitrator

Date Of Decision: January 31, 1996

I, David Fogel, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

  
David Fogel, Esq.

I, Robert A. Costello, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Robert A. Costello

I, James J. Noone, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

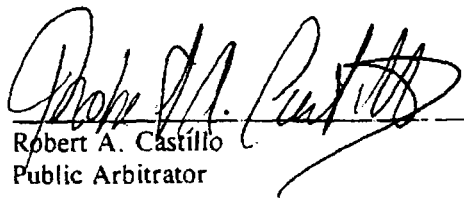
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James J. Noone

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**ARBITRATOR'S SIGNATURE**

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David Fogel, Esq. - Chairperson  
Public Arbitrator



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Robert A. Castillo  
Public Arbitrator

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James J. Noone  
Industry Arbitrator

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David Fogel, Esq.

CASTILLO

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Robert A. Castillo  
CASTILLO

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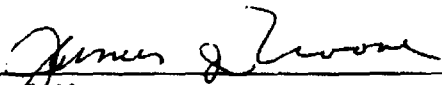
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