

NASD AWARD

<u>Claimants</u>)	
)	
Gilbert Charland)	
)	
)	Case Number
)	94-01934
)	
<u>Respondent</u>)	
)	
Hanover Sterling & Company, Ltd.)	
)	
)	

REPRESENTATION

Claimant, Gilbert Charland ("Charland") was pro se.

Respondent, Hanover Sterling & Company, Ltd. ("Hanover") was represented by M. David Sayid, Esq. of Sayid and Associates, New York, NY for purposes of the Statement of Answer, however no representative for Hanover appeared at the hearing.

CASE INFORMATION

Statement of Claim filed: May 23, 1994. Claimant's Submission Agreement signed: May 19, 1994.

Respondent's Statement of Answer filed: October 14, 1994. Respondent did not sign a Submission Agreement as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure ("Code") (see "Other Issues").

HEARING INFORMATION

On March 24, 1995, in Tampa, Florida, a hearing lasting one session was conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for failure to follow trading instructions. Claimant alleged that on March 29, 1994, he received a telephone call from Steve Ropas ("Ropas") of Hanover who solicited his purchase of 300 shares of American Toys, Inc. ("ATI"). Claimant agreed to purchase 300 shares at \$5.00 per share and, on April 4, 1994 Respondent confirmed the transaction by telephone with directions for Claimant to send

\$1,520.00 as payment therefore. Claimant alleged that on or about April 6, 1994, he placed a phone call to Respondent and spoke with Alfred Barkley who confirmed that the money had been received and that Claimant owned 300 shares of ATI.

Claimant alleged that on or about April 7, 1994 he contacted Respondent by phone with instructions to sell the stock at the, then current, rate of between 12 and 12.75 per share. Respondent informed Claimant that he only had 100 shares and that the order for the additional 200 shares had been cancelled. Claimant alleged that he had received a statement from Hanover for the month of March, 1994 which disclosed that he owned 300 shares and that, subsequently, on April 7, 1994 a transaction confirmation was mailed alleging that he had purchased only 100 shares. Thereafter, Claimant received a transaction confirmation stating that 100 shares had been sold at 11.5 per share for a net amount of \$1,130.00. On April 20, 1994, Claimant received payment in the amount of \$2,130.00 representing 100 shares at 11.5 per share for a total of \$1,150.00 less the transaction charge of \$20.00 plus a refund of \$1,000.00 from his deposit. Claimant alleged that 300 shares should have been sold at 12.5 for a total of \$3,750.00 less the \$20.00 transaction fee and that, since he only received \$2,130.00, there is a balance due of \$1,600.00.

Respondent denied all allegations of wrongdoing and alleged that: Ropas solicited an "indication of interest" in the IPO from Claimant; Ropas informed Claimant that it was not a confirmed order and that the actual order might be reduced if Ropas received a reduced allocation of shares; Ropas' allocation was so reduced; Respondent's policy disallows a broker from allocating more than 100 units to a new client; and, on March 29, 1994, 300 units were purchased for Claimant in error, which error was subsequently corrected.

RELIEF REQUESTED

Claimant requested damages in the amount of \$1,600.00 plus interest.

Respondent requested dismissal of the claim.

OTHER ISSUES CONSIDERED AND DECIDED

- (1) Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure.
- (2) No one appeared on behalf of Hanover, however, based on the evidence contained in Arbitrator's Exhibit #2, this arbitrator finds service on and due notice to Respondent. The arbitrator finds that Respondent was required to sign a submission agreement pursuant to Sections 12 and 25 of the Code, Respondent being an NASD member firm at the time the facts giving rise to the controversy occurred.

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Award

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AWARD

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

- (1) Respondent, Hanover is found liable and shall pay to Claimant the amount of \$1,300.00, plus interest at the rate of 12 % per annum (from April, 14, 1994 to March 24, 1995) in the amount of \$147.02 for a total due to the Claimant of \$1,447.02.

OTHER COSTS

Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$25.00 (One session x \$25.00 per session).

- (1) Respondent is hereby assessed \$25.00 payable to the National Association of Securities Dealers, Inc.
- (2) The NASD shall retain the non-refundable filing fee of \$25.00 paid by the Claimant.
- (3) The NASD shall refund to Claimant the hearing session deposit of \$25.00 which was previously paid by Claimant.

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

Concurring Arbitrator(s) Signature(s)

Public/Industry

15/
Edwin B. Kagan, Esq.

Public /Chairman

Date of Decision: 4-17-95