

NASD REGULATION, INC AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

MSS LTD Gibraltar

94-02011

Name of Respondents

J.W. Bullard & Co. Inc.
Cantella & Co. Inc.
James W. Bullard
Moshe Silver

REPRESENTATION

For Claimants MSS LTD Gibraltar ("MSS") and Zbigniew Mazurek ("Mazurek")(collectively, "Claimants") appeared Jamie C. Rosenberg, Esq., of the law firm, Rosenberg, Singer & Bienbstock.

For Respondents J.W. Bullard & Co., Inc.("Bullard & Co."), and James W. Bullard ("Bullard") appeared Arthur P. Fisch, Esq., a solo practitioner located in New York City, New York.

For Respondent Cantella & Co., Inc.("Cantella"), appeared Peter M. Coppinger, Esq., of the law firm, Gabsby & Hannah, located in Boston, Massachusetts.

Respondent Moshe Silver ("Silver") appeared pro se.

CASE INFORMATION

Statement of Claim filed: June 1, 1994.

Claimants' Submission Agreement signed on: May 11, 1994.

A Joint Statement of Answer was filed by Respondents, Bullard & Co. and Bullard on November 16, 1994.

Respondents Bullard & Co. and Bullard did not file a Submission Agreement.

Statement of Answer filed by Respondent Cantella on: September 22, 1994.

Respondent, Cantella's Submission Agreement signed on: September 22, 1994.

Statement of Answer filed by Respondent Silver on: October 14, 1994.

Respondent Silver did not file a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference:	January 27, 1995	-	One Session
Hearing Dates/Sessions:	February 7, 1995	-	Two Sessions
	February 8, 1994	-	Two Sessions
	June 24, 1997	-	Two Sessions

The hearings were held at the offices of NASD Regulation, Inc., located in New York City, New York.

CASE SUMMARY

Claimant Mazurek alleged that he was president and CEO of MSS, and in July 1993, he opened an account (the "Account") for claimant MSS with Bullard Co. Claimant alleged that the Account was cleared through Cantella and the agent who serviced the Account was Xavier Poirier ("Poirier") an employee of Bullard Co. Claimant further asserted that after Poirier's termination, Bullard personally assumed responsibility for the Account. Claimant also asserted that because of a recent transaction, its Account had a 90 day restriction imposed by Cantella which prohibited it from performing any transactions without cash funds. Claimant contended that Bullard & Co. faxed claimant a draft document granting Bullard the right to buy and sell securities for the Account, and that the limited power of attorney prohibited any purchases beyond the Account's available credit balance. Claimant further contended that, in mid-February 1994, Bullard purchased 200,000 shares of EuroAmerican Group, Inc. at \$5.50 per share for a total of \$1,100,000.00, far exceeding the available credit of \$10,000.00. Claimant contended that this act violated the limited power of attorney and the 90 day restriction. Claimant also contended that Mazurek immediately contacted Bullard and demanded that the purchase be canceled sending a fax to reiterate the demand and revoking the limited power of attorney Bullard had been granted. Claimant further maintained that, in March 1994, Cantella and Bullard & Co. sold out the 200,000 shares of EuroAmerican along with 45,000 previously owned shares at 2 7/8 per share resulting in a loss of \$526,000.00

Respondent Bullard maintained that after Poirier was terminated as an account executive at Bullard & Co., Bullard contacted Mazurek to make an agreement that Bullard would then manage the account. Bullard further maintained that he did contact Mazurek prior to purchasing shares of EuroAmerican, that their conversation was witnessed by two other employees of Bullard, and that Silver reconfirmed the trade with Mazurek in French to ensure that there was no misunderstanding. Bullard also maintained that Mazurek assured them that he would send the funds the next day, and that based on those assurances, the trade was placed. Bullard contended that Poirier contacted Mazurek and encouraged him to renege on the trade after which Mazurek notified Bullard that he would not honor the transaction. Bullard contended that this act forced him to sell the shares at the market price of 2 7/8. Bullard further contended that the loss was precipitated by claimant's cancellation of the order, and by the interference of Poirier.

Respondent Bullard's Cross Claim Against Poirier

Bullard alleged that Bullard & Co. acted properly in entering the order and in selling out the account, that respondent Silver's contact with Mazurek was solely as an employee of Bullard & Co. and at the request of Mr. Bullard, and that Mazurek's intent to renege on the purchase, and subsequent loss was Poirier's responsibility by instigating him to renege on the purchase of EuroAmerican shares, therefore, Bullard & Co. ask that the claim be dismissed.

Respondent Cantella maintained that it is a "clearing broker" which executes and/or clears orders submitted to it by an "introducing broker". Cantella further maintained that in November 1992, it entered into a Fully Disclosed Accounts Agreement (the "Clearing Agreement") with Bullard & Co. which defined Cantella's role with Bullard & Co. as limited to the mechanics of clearing orders, holding Cantella harmless from any claims resulting from Bullard's breach of the Clearing Agreement. Cantella also maintained that in July 1993, claimants filled out a new account form with Bullard and indicated "Growth with Risk, and Speculation - High Degree of Risk and/or activity." Cantella contended that in July 1993, it executed a Customer Agreement, signed by claimants which stated that:

"If you are carrying the account of the undersigned as clearing broker by arrangement with another broker to whose courtesy the account of the undersigned has been introduced to you, then until receipt from the undersigned of written notice to the contrary, you may accept from such other broker, without inquiry or investigation by you (a) orders for the purchase or sale in said account of securities and other property on margin or otherwise, and (b) any other instructions concerning said account. You shall not be responsible or liable for any acts or omissions of such other broker or its employees."

Cantella further contended that it did not execute any trades for claimant, but that it received orders from Bullard and processed those orders as instructed without any contrary indications from claimant.

Respondent Cantella's Counterclaim

Cantella alleged that claimants signed a Customer Agreement with Cantella in which they agreed that Cantella "shall not be responsible or liable for any acts or omissions of [the introducing broker] or its employees." Cantella further alleged that, as a result, claimants are liable to Cantella for the full amount of any award entered against Cantella in this proceeding, and for all costs, expenses, and attorney's fees.

Respondent Cantella's Cross Claim Against Respondent Bullard & Co.

Cantella alleged that Bullard & Co. and Cantella, are parties to a Clearing Agreement in which Cantella agreed to act as clearing broker for Bullard, who, in return, would hold Cantella harmless against any liability caused directly or indirectly as a result of Bullard's breach of any terms [of the Clearing Agreement]. Cantella maintained that the Statement of Claim alleges misconduct by Bullard and its employees, and that it has no liability to claimants, therefore, if the allegations are true, Bullard & Co. and its employees are liable to Cantella for the full amount of any judgment by the claimants against Cantella, plus costs and attorneys fees.

Respondent Silver maintained that he was wrongly named in this claim, that claimant was fully aware of his title at Bullard & Co. as Senior VP of Operations, a position which carried no personal authority to discipline brokers or reverse transactions, and that at no time did he exercise control over the firm's trading desk, nor over Bullard's customer accounts. Silver also maintained that his involvement with claimant was as a translator for Bullard, who was fully informed of every communication between them. Silver contended that he never participated in Bullard's attempts to sell Mazurek securities, but only passed along information Bullard had provided. Silver further contended that he derived no financial benefit from any commissions generated from Mazurek's accounts, nor would his compensation have been affected if MSS moved its accounts away from Bullard & Co.

RELIEF REQUESTED

Claimants requested damages of \$526,000.00, plus interest from the date of the trade, all costs and expenses.

Respondents Bullard and J.W. Bullard & Co. requested that claimant's claim be dismissed, and that they be awarded against Poirier for the sum of \$526,000.00 for lost accounts, and \$50,000.00 for all costs and legal fees.

Respondent Cantella requested that claimant's claim against it be dismissed with prejudice; that the panel find in favor of Cantella and against claimants on the counterclaim for the full amount of any judgment entered against Cantella in favor of any party to this proceeding, plus costs, interest and attorney's fees; and against Bullard & Co. and/or its employees on the cross claim in the full amount of any judgment entered in favor of the claimants and against Cantella, plus costs, and all attorney's fees.

Respondent Silver requested that claimant's claim be dismissed with respect to his involvement.

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 originals remain on file with the NASD.

The arbitration panel made the following rulings concerning respondents J.W. Bullard & Co., James W. Bullard and Moshe Silver who failed to file Submission Agreements:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondents were members of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondents J.W. Bullard & Co., James Bullard and Moshe Silver pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found that respondents J.W. Bullard & Co., James Bullard and Moshe Silver were required to file with NASD Regulation a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondents J.W. Bullard & Co., James Bullard and Moshe Silver, pursuant to Rule 10314(a) of the Code.

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. The claims of claimants MSS LTD Gibraltar and Zbigniew Mazurek against respondents J.W. Bullard and James Bullard are dismissed in their entirety.
2. Respondent Moshe Silver's Motion to Dismiss the claims of MSS LTD Gibraltar and Zbigniew Mazurek is granted.
3. Claimants' Motion to reargue or renew the panel's prior dismissal of the claims against Respondent Cantella & Co., Inc. is denied.
4. The parties shall bear their respective attorney's fees and costs.
5. All other relief requests are denied.

COSTS

Claimants be and hereby are liable to NASD Regulation for \$75.00 representing administrative costs incurred during the processing of this matter. Therefore claimants shall pay to NASD Regulation \$75.00 in satisfaction of this fee.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously deposited by the Claimants and have assessed the following forum fees:

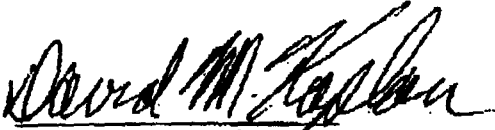
one pre-hearing conference x \$300.00	=	\$ 300.00
six sessions x \$1,000	=	\$6,000.00
minus claimants' hearing session deposit	=	\$1,000.00

Claimant MSS LTD Gibraltar be and hereby is liable for \$3,150.00 representing one-half of the forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc. Therefore, Claimant MSS LTD Gibraltar shall pay to NASD Regulation, Inc. the sum of \$2,150.00.

Respondents J.W. Bullard & Co., Inc., and James W. Bullard, Jr. be and hereby are jointly and severally liable for \$3,150.00 representing one-half of the forum fees assessed. Therefore, Respondents J.W. Bullard & Co., Inc. and James W. Bullard shall pay to NASD Regulation the sum of \$3,150.00.

ARBITRATORS' SIGNATURES

I, David M. Kaplan, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



David M. Kaplan, Esq.
Public Chairperson

I, Eugene F. Farabaugh, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.
Public/Industry

Eugene F. Farabaugh, Esq.,
Public Arbitrator

I, Clifford Friedman, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.
Public/Industry

Clifford Friedman
Industry Arbitrator

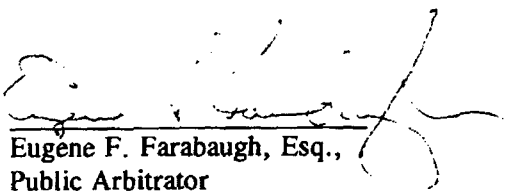
Date of Decision: August 18, 1997

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Public Chairperson

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Public Arbitrator

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Public/Industry

Clifford Friedman
Industry Arbitrator

Date of Decision: August 18, 1997

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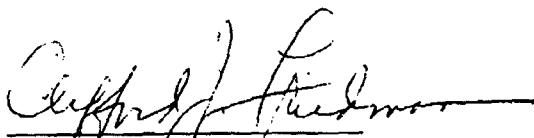
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Public Arbitrator

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Public/Industry



Clifford Friedman
Industry Arbitrator

Date of Decision: August 18, 1997