

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Hank Gatti

95-00002

Name of Respondents

Sovereign Equity Management Corp.  
Albert Anthony Matani

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**REPRESENTATION**

For Claimant, Hank Gatti ("Gatti"): Allan J. Fedor, Esq. and Franell Fedor, Esq. of Fedor & Fedor, of Largo, FL.

For Respondents, Sovereign Equity Management Corp. ("Sovereign") and Albert Anthony Matani ("Matani"): H. Thomas Fehn, Esq. of Fields, Fehn & Sherwin, Los Angeles, CA.

**CASE INFORMATION**

Statement of Claim filed December 21, 1994. Amended Statement of Facts and Claim in response to Respondents' Motion for a More Definite Statement filed November 10, 1995. Claimant's Uniform Submission Agreement signed on September 15, 1994.

Respondents' Answer received on March 20, 1995 and their Uniform Submission agreements signed on March 22, 1995.

**HEARING INFORMATION**

On October 9, 1995 and January 10, 1996, pre-hearing conferences lasting two sessions were conducted via telephone conference call with an arbitrator.

On April 22, 1996, in Tampa, Florida, a hearing lasting two sessions was conducted.

## **CASE SUMMARY**

Claimant alleged that he opened an account with Respondents for the short term investment of funds. Claimant alleged that Respondent Matani "guaranteed" that he could make money for Claimant because Sovereign was a market maker and could somewhat control the market in the stock that it sold. Claimant alleged that Matani made price predictions about speculative securities without a reasonable basis, made misrepresentations about securities he recommended, recommended unsuitable securities for purchase by Claimant, and engaged in "churning" Claimant's account. In addition, Claimant alleged that Respondent Sovereign failed to properly supervise the activities of its agent, Matani, and the Respondent Sovereign was responsible for the conduct of Matani under the common law theory of respondeat superior.

Claimant further alleges that Respondents' conduct: constituted fraudulent transactions in violation Florida Statutes Section 517.301; constituted common law fraud and/or negligent misrepresentation; constituted negligence and/or gross negligence; and, constituted a breach of fiduciary duty to Claimant.

Respondents denies all allegations of wrongdoing and alleged that Matani never guaranteed the performance of any securities purchased by Claimant, nor did Matani represent that there would never be losses in Claimant's account at Sovereign. Claimant was a knowledgeable, experienced investor who clearly knew and understood the risks associated with his investments. Respondents admit that Sovereign was a principal in all but one of the trades in Claimant's account, but denies any allegation that Respondents manipulated the stock price and/or the mark-up or mark-down on the stock. Respondents deny that Claimant's account was "churned", and accordingly deny all allegations relating to Claimant's claim of "churning."

Respondents alleged the affirmative defenses of failure to state a cause of action; bar of tort claims by economic loss rule; assumption of the risk; good faith; exercise of the proper standard of care; comparative fault; failure to mitigate damages; laches; statute of limitations; estoppel; waiver; notification; and bar by section 8-319 of the Uniform Commercial Code.

## **RELIEF REQUESTED**

Claimant requested actual compensatory damages in excess of \$35,800.00 including interest, and excessive commissions plus interest in excess of \$11,600.00, plus costs, expenses, disbursements and reasonable attorney's fees as well as filing and forum fees. Claimant also requested punitive damages and such other relief as the panel deems just and proper. Further, Claimant requested sanctions for Respondents failure to produce documents as requested by Claimant and Respondents' failure to produce documents as ordered by the Chairman.

Respondents requested dismissal of the Claim in its entirety.

## **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.

### **AWARD**

After considering the pleading, 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 Sovereign Equity Management, Corp. and Albert Anthony Matani are found liable jointly and severally and shall pay to the Claimant the amount of \$23,270.00, plus pre-judgement interest in the amount of \$3491.00.
- 2) Respondent Sovereign shall pay the Claimant's cost and expenses in the amount of \$1,623.00.
- 3) Respondent Sovereign shall be liable for Claimant's reasonable attorney's fees pursuant to F.S. Section 517.301. The amount of such reasonable attorneys' fees shall be determined by a court of competent jurisdiction.
- 4) Respondent Sovereign shall pay the Claimant sanctions in the further amount of \$3,000.00 for discovery abuse and failure to produce documents as ordered.
- 5) Claimant's request for punitive damages are hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,400.00 (two pre-hearing conferences x \$300.00 plus two hearing sessions x \$400.00).

Claimants is hereby assessed 35% of all forum fees, which amount to \$490.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$90.00.

Respondent Sovereign is hereby assessed 65% of all forum fees, which amount to \$910.00 payable to the NASD.

Respondents shall reimburse the Claimant \$78.00, which is 65% of the \$120.00 non-refundable filing fee previously submitted by Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

Paul Sidney Elliott, Esq.

/s/

Industry

Forrest E. Sovring

/s/

Public

Sheldon L. Barat

Date of Decision: June 4, 1996