

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimants

Roman and Marie Sterlin

v.

95-01103

Name of Respondents

David Solomon  
Robert Ford  
American Trading Securities Corp.

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**REPRESENTATION**

For Claimants, Roman and Marie Sterlin, appeared Roman Sterlin (pro se).

For Respondents, David Solomon, Robert L. Ford and American Trading Securities Corp., appeared Stephen A. Zrenda, Esq. from the law firm of Stephen A. Zrenda, Jr., P.C., Oklahoma City, Oklahoma

**CASE INFORMATION**

Statement of Claim filed: March 2, 1995

Claimant, Roman Sterlin's, Submission Agreement signed on: February 11, 1994

Claimant, Marie Sterlin's, Submission Agreement signed on: February 11, 1994

Joint Statement of Answer filed by Respondent on: May 9, 1995

Respondent, David Solomon's, Submission Agreement signed on: April 14, 1995

Respondent, Robert Ford's, Submission Agreement signed on: April 14, 1995

Respondent, American Trading Securities Corp.'s, Submission Agreement signed on: April 14, 1995

### HEARING INFORMATION

Pre-Hearing Conference: May 28, 1996 (1 Session)

Hearing dates/sessions: May 29, 1996 (2 Sessions)

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York City, New York.

### CASE SUMMARY

Claimants alleged that on June 22, 1994, at 9:33 AM, Roman Sterlin ("Sterlin") placed an order to sell 6000 shares of Biomune Systems, Inc., ("Biomune") with Respondent, American Trading Securities Corp. ("American"). Claimants alleged Sterlin placed a limit order of \$6.00 with Respondent, Robert Ford ("Ford") since his account executive, Respondent, David Solomon ("Solomon"), was not in the office at the time.

Claimants alleged that despite the order the trade was never executed in Sterlin's account. Claimants further alleged that Sterlin's actions prior to and following his order prove Claimants' allegations, which the Respondents now refute.

Claimants alleged that prior to Sterlin's conversation with Ford he called Berkeley Securities Corp. ("Berkeley"), at 9:20 AM, and was quoted Biomune's price at \$6.125/\$6.375 (bid/ask). Claimants alleged that Sterlin then called Waterhouse Securities, Inc. ("Waterhouse"), at 9:28 AM, and was quoted Biomune's price at \$6.00/\$6.25. Claimants further alleged that Sterlin immediately called Berkeley again, at 9:29 AM, and placed two orders to sell shares of Biomune at \$6.00 per share. Claimants alleged that Sterlin ordered the sale of 4,500 shares from his joint account with his wife and 12,000 shares from his Keogh account. Claimants alleged that the orders to Berkeley were never executed and are the subject of a formal complaint filed with the NASD.

Claimants alleged that following Sterlin's conversation with Ford at American, he called Waterhouse, at 9:39 AM, to sell; 1,500 shares of Biomune from his IRA account, 1,500 shares from his wife's IRA account, and 16,500 shares in his joint account. Claimants alleged that all three sell orders were entered at \$6.00 per share.

Claimants further alleged that after placing the three orders Sterlin asked for a confirmation on the trades. Claimants alleged that the 1500 shares of Biomune were sold from Sterlin's IRA account; however, the other trades were not made, since the bid had dropped to \$5.875.

Claimants alleged that Sterlin then called Ford to see if Ford had executed his order; however, the receptionist informed Sterlin that he needed to speak to Solomon. Claimants alleged that instead of submitting Sterlin's order, Ford called Solomon, who in turn was trying to contact Sterlin. Claimants alleged that when Solomon contacted Sterlin at 9:50 AM the bid for Biomune had dropped to \$5.75. Claimants alleged Solomon tried to persuade Sterlin to keep the stock

by all possible means and did not get off the phone until Sterlin agreed to cancel the order.

Claimants alleged that Sterlin realized that the sale of 16,000 shares of Biomune from his Waterhouse account would drive the price down so he choose to postpone his order at Waterhouse to give American ample time to execute his orders and leave no room for excuses. Claimants alleged that the shares were not sold, and that if Sterlin knew his orders were going to be ignored by Ford, he would have immediately sold the Biomune shares at Waterhouse.

Claimants alleged that by noon the price of Biomune had fallen to \$5.00/\$5.25. Claimants further alleged that, at 12:49 PM, Sterlin placed an order to repurchase 1,700 shares of Biomune at \$5.25 per share for his IRA account at Waterhouse, thus realizing a profit of 200 shares of Biomune.

Claimants alleged that if Sterlin's shares at American were sold he could have bought them back at \$5.25 per share, thus realizing a profit of \$0.75 per share per share, for a total of \$4,500. Further, Claimants alleged that if Sterlin had not waited to sell the shares of Biomune at Waterhouse, he could have realized a \$1,125 profit in his wife's IRA account and possibly \$12,375.00 in his account on the buy back, at \$5.25 per share.

Respondents, American, Ford and Solomon maintained that Solomon was out of the office on June 22, 1994, and that Sterlin's call was transferred to Ford. Respondents maintained that Sterlin told Ford that he was contemplating selling his shares of Biomune and asked Ford if he knew anything about the company. Respondents maintained that Ford informed Sterlin what he knew about Biomune but told Sterlin that Solomon knew much more about it. Respondents further maintained that Ford suggested Claimant speak to Solomon before making any decisions; to which Sterlin agreed.

Respondents maintained that Ford immediately contacted Solomon who in turn contacted Sterlin. Respondents maintained that during the conversation with Solomon, Sterlin decided not to sell his share of Biomune.

### **RELIEF REQUESTED**

Claimants requested:

1. \$4,500.00 in unrealized profits for Roman Sterlin's account at American Trading Securities Corp.;
2. \$1,125.00 in unrealized profits in his Marie Sterlin's IRA account at Waterhouse Securities, Inc.;
3. \$12,375.00 in unrealized profits in Roman Sterlin's account at Waterhouse Securities, Inc.;
4. Interest on the entire amount from June 22, 1994; and,

5. All costs and fees associated with the arbitration.

Respondents requested:

1. All claims be dismissed in their entirety.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

1. At the request of Respondents, the panel granted permission for Respondents, Ford, Solomon, American Trading and their counsel to appear at the evidentiary hearing via telephone conference call.
2. 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 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. All claims asserted by Claimants against Respondents, American Trading Securities Corp., Robert Ford and David Solomon are dismissed;
2. All parties are to bear their respective costs, including attorneys' fees; and,
3. All other requests for relief are denied.

### **FORUM FEES**

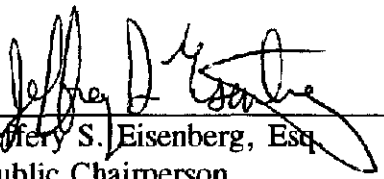
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Pre-Hearing Conference:	\$ 300.00	(1 Session x \$300)
Hearing Session Fees:	\$ 800.00	(2 Sessions x \$400)
 Total Forum Fees:	 \$1100.00	

- 1) Claimants, Roman and Marie Sterlin, are assessed, jointly and severally, the amount of \$550.00 representing one-half the total forum fees due, less \$400.00 previously paid, leaving \$150.00 due. Therefore, Claimants, Roman and Marie Sterlin, are jointly and severally liable and shall pay to the NASD the sum of \$150.00.
- 2) Respondents, American Trading Securities Corp., Robert Ford and David Solomon, are assessed, jointly and severally, the amount of \$550.00 representing one-half the total forum fees due. Therefore, Respondents, American Trading Securities Corp., Robert Ford and David Solomon, are jointly and severally liable and shall pay to the NASD the sum of \$550.00.

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

**ARBITRATORS' SIGNATURES**

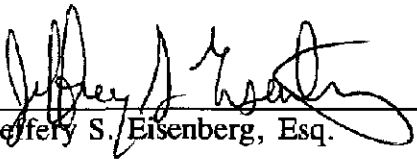
  
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Jeffery S. Eisenberg, Esq.  
Public Chairperson

\_\_\_\_\_  
William D. LeMoult  
Public Arbitrator

\_\_\_\_\_  
Michael J. McCormack  
Industry Arbitrator

Date of decision: \_\_\_\_\_

I, **Jeffery S. Eisenberg, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

  
Jeffery S. Eisenberg, Esq.

I, **William D. LeMoult**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

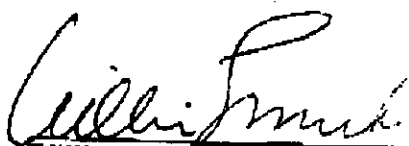
\_\_\_\_\_  
William D. LeMoult

I, **Michael J. McCormack**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Michael J. McCormack

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Jeffery S. Eisenberg, Esq.  
Public Chairperson

  
\_\_\_\_\_  
William D. LeMoult  
Public Arbitrator

\_\_\_\_\_  
Michael J. McCormack  
Industry Arbitrator

Date of decision: September 27, 1996



I, **Jeffery S. Eisenberg, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

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**Jeffery S. Eisenberg, Esq.**

I, **William D. LeMoult**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.



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**William D. LeMoult**

I, **Michael J. McCormack**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

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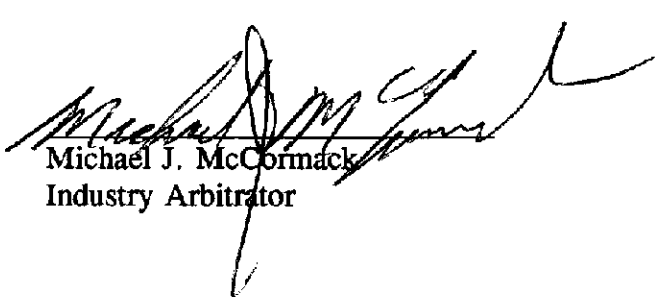
**Michael J. McCormack**

NASD Date of Decision: September 27, 1996

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Jeffery S. Eisenberg, Esq.  
Public Chairperson

\_\_\_\_\_  
William D. LeMoult  
Public Arbitrator

  
\_\_\_\_\_  
Michael J. McCormack  
Industry Arbitrator

Date of decision: \_\_\_\_\_

**I, Jeffery S. Eisenberg, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.**

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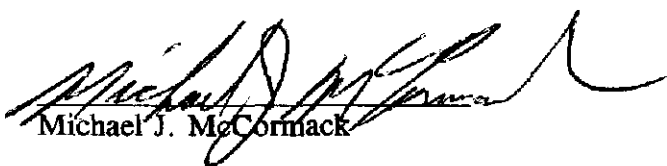
**Jeffery S. Eisenberg, Esq.**

**I, William D. LeMoult, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.**

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**William D. LeMoult**

**I, Michael J. McCormack, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.**



**Michael J. McCormack**