

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

American Classics Inc. and Pamela J. Prive

95-01486

Name of Respondent(s)

Hanover Sterling & Co.
Lowell Schatzer
Mark Antonucci
Mark Mancino
David Sayid

REPRESENTATION

For Claimants American Classics, Inc. ("ACI") and Pamela J. Prive ("Prive"): Neal Baritz, Esq. of Dreier & Baritz, Boca Raton, FL.

For Respondent Mark Mancino ("Mancino"): Jim Scutti, Esq. of Jim Scutti, P.A., Boca Raton, FL.

For Respondent David Sayid ("Sayid"): Lawrence Gelber, Esq. of Beigel Lasky Riskind Fertik Gelber et al., New York, NY.

For Respondent Hanover Sterling & Co., Ltd ("Hanover"): Lowell Schatzer of Hanover, New York, NY.

Respondents Lowell Schatzer ("Schatzer") and Mark Antonucci ("Antonucci") appeared pro se.

CASE INFORMATION

Statement of Claim filed: March 24, 1995. Claimant ACI's Submission Agreement signed on: March 20, 1995 by Yegal Sananes on behalf of ACI. Claimant Prive's Submission Agreement signed on: March 20, 1995.

Statement of Answer filed by Respondents Mancino and Schatzer on November 22, 1995. Respondent Mancino filed an Amended Statement of Answer on his own behalf on June 13, 1996. Respondent Mancino's Submission Agreement signed on: November 22, 1995. Respondent Schatzer failed to sign a Submission Agreement as required by Rules 10301 and 10314 of the NASD Code of Arbitration Procedure ("Code") (see "Other Issues").

Respondent Sayid filed a Motion to Dismiss in lieu of a Statement of Answer and failed to sign a Submission Agreement (see "Other Issues").

Respondents Hanover and Antonucci failed to file Answers or sign Submission Agreements (see "Other Issues").

HEARING INFORMATION

On December 16, 17 and 18, 1996 and January 28 and 29, 1997 in Ft. Lauderdale, Florida, hearings lasting nine sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for unauthorized trading; breach of contract; civil theft; fraud and violation of federal and state securities laws. Claimants alleged that Respondent Mancino made various unauthorized purchases and sales of stock which were in contravention of Claimants' specific instructions. Claimants further alleged that Mancino attempted to engage in "free-riding" when he purchased certain common stock at a total cost in excess of the amount of cash available in the account. Claimants maintained that, in order to cover the shortfall, Mancino intended to immediately take profits from the trade and instructed Yegal Sananes, president of ACI and the individual who was responsible for directing the trading in ACI's account, to forward a check written against insufficient funds.

Respondents Schatzer and Mancino denied all allegations of wrongdoing and alleged that Schatzer and Mancino properly discharged their duties, responsibilities and obligations to Claimants and acted in accordance with applicable laws and accepted industry standards and practices. Schatzer and Mancino asserted affirmative defenses including failure to exercise due diligence; Claimants were sophisticated investors who were seeking speculative investments; failure to timely object; contributory negligence; failure to state a claim; ratification; any losses occurred as a result of market conditions; the damages sought are speculative; laches; Respondents never executed any unauthorized trades; Respondents made no misrepresentations; and, Claimants failed to allege any material facts to support their claim of fraud.

Respondent Mancino filed an Amended Statement of Answer wherein he further alleged that all trades were authorized and Claimants had a habit of renegeing on trades and claiming that they were unauthorized if the investment declined in value. Mancino asserted affirmative defenses

including failure to state facts supporting the claims; ratification; estoppel; failure to mitigate damages; statute of limitations; and, the economic loss rule.

Respondent Sayid filed a Motion to Dismiss for Lack of Jurisdiction in lieu of filing a Statement of Answer. Sayid alleged in his motion that he was not employed by the Respondents and only provided legal services to Hanover as an attorney. Sayid further maintained that he was not a member of the NASD nor was he employed by, or affiliated with, any member of the NASD so as to subject him to the NASD's jurisdiction. Sayid alleged that he never entered into an arbitration agreement with Claimants.

Claimants maintained that the NASD had jurisdiction over Sayid pursuant to Rules 10101 and 10301 of the Code as well as the definition of an "associated person" contained in Article 1 Section (m) of the NASD By-Laws.

Respondents Hanover and Antonucci failed to file Statements of Answer (see "Other Issues").

RELIEF REQUESTED

Claimants requested damages in excess of \$150,000.00 plus attorney's fees, costs, and punitive damages.

Respondent Schatzer requested dismissal of the claim.

Respondent Mancino requested dismissal of the claim plus costs and attorney's fees.

Respondent Sayid requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. Pursuant to rule 10101 of the NASD Code of Arbitration Procedure ("Code"), the arbitration panel found subject matter jurisdiction over this controversy.
2. The arbitration panel further found that Respondent Schatzer was a person associated with a member of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over Respondent Schatzer pursuant to Rule 10301 of the Code.
3. In view of the above, the arbitration panel found that Respondent Schatzer was required to file with the NASD a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard the arbitration panel found that the Statement of Claim was properly served upon Respondent Schatzer pursuant to Rule 10314(a) of the Code.

4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the arbitration panel found that the NASD provided Respondent Schatzer with "due notice" of the hearing conducted in this matter as evidenced in the record of proceedings. The arbitration panel, therefore, determined to proceed with the hearing without Respondent Schatzer, whose absence was unexcused.

5. The panel granted Respondent Sayid's Motion to Dismiss prior to the final hearing of this matter and, therefore, the panel has made no determinations with respect to Respondent Sayid.

6. Respondents Hanover and Antonucci filed for bankruptcy prior to the final hearing and, therefore, Hanover and Antonucci were dismissed without prejudice pursuant to the automatic stay provisions of the U.S. Bankruptcy Code.

7. 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 original(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Schatzer and Mancino are found not liable and, therefore, the claims against them are hereby dismissed.
2. Claimants' requests for costs, attorney's fees and punitive damages are denied.
3. Respondent Mancino's request for attorney's fees is denied.

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.

FORUM FEES

Pursuant to Rule 10332(c) of the Code the panel has assessed forum fees in the amount of \$6,750.00 (nine sessions x \$750.00 per session).

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Award

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1. Claimants are hereby assessed \$6,750.00, jointly and severally, for which the NASD shall retain the \$750.00 previously deposited by Claimants in partial satisfaction thereof leaving a balance due to the NASD of \$6,000.00.

2. The NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimants to the NASD.

3. The NASD shall refund to Respondent Mancino the \$750.00 paid by him for the postponement request which was denied.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Janet C. Zwiebel

Industry

/s/
Calvin D. Cevaal

Public

Dissenting Arbitrator's Signature

/s/
Arthur J. Leibell, Esq.

Public/Chairman

Date of Decision: february 27, 1997