

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Frank Marotta

95-01578

Name of Respondent(s)

Meyers Pollock Robbins, Inc.
James Byrne

REPRESENTATION

For Claimant, Frank Marotta ("Claimant"), appeared Joseph F. Keenan, Esq., of the law firm Bochat & Keenan located in Garden City, New York.

For Respondents, Meyers Pollock Robbins, Inc. ("Meyers Pollack") and James Byrne ("Byrne") appeared Robert Klugman Esq., and Leon B. Lipkin, Esq. from the Law Offices of Leon Lipkin located in New York, New York.

CASE INFORMATION

Statement of Claim filed: March 29, 1995.

Claimant's Submission Agreement signed on: March 22, 1995.

Respondents' Joint Statement of Answer filed on: June 15, 1995.

Respondents Meyers Pollack and Byrne did not file a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions:	December 9, 1996	-	Two Sessions
	January 1, 1997	-	One Session

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

CASE SUMMARY

Claimant alleged that he had little investment experience when he opened a securities account with Byrne at Meyers Pollack in June 1992. Claimant alleged that he informed Byrne that the funds he was investing were an from I.R.A. rollover which was for his retirement and that the money needed to be invested conservatively.

Claimant contended that Byrne disregarded his investment goals by investing in unsuitable investments. Claimant also contended that Byrne, although he lacked discretionary authorization, treated Claimant's account as if it were a discretionary account and made purchases without first obtaining his authorization. Claimant alleged that when he tried to reach Byrne to complain he would routinely be advised that Byrne was out of the office. Claimant further alleged that he subsequently closed his account with Respondents.

Claimant asserted that the only motive for Respondents' trading of his account was to generate commissions. Claimant asserted that, by conducting unauthorized trading and margin transactions without having a signed margin agreement, the Respondents violated NASD Rules of Fair Practice Article III Section 1. Claimant further asserted that by purchasing speculative and unsuitable investments Byrne violated New York Stock Exchange ("NYSE") Rule 405 (Know Your Customer Rule) and NASD Rules of Fair Practice Article III Section 2: (Know Your Client Rule).

Claimant contended that Byrne violated NASD Rules of Fair Practice by trading his account to generate commissions. Claimant contended that Meyers Pollack violated NASD Article III Section 27 (Negligent Supervision) in that the branch manager did not diligently supervise Claimant's accounts. Claimant contended that by failing to abide by his financial objectives, Respondents violated the Securities Act of 1933 and the Securities and Exchange Act of 1934. Claimant also contended that Respondents violated NYSE Rules 723, 724 and 726.

In their Joint Answer, Respondents admitted that at all relevant times Byrne was Claimant's account executive and that the acts complained of involved the purchase and the sale of securities within the meaning of the Securities Act of 1933 and the Securities & Exchange Act of 1934; in addition to NYSE Rules 723, 724 and 726. Respondents admitted that they had a duty to recommend to the claimant suitable securities based on his financial objectives. Respondents denied all other specific allegations made by the Claimant.

Respondents asserted that the Statement of Claim failed to state a cause of action; Claimant failed to mitigate his damages and that Claimant is a sophisticated investor who assumed the risk of investing in the securities market. Respondents further contended that any loss Claimant suffered was caused by his own conduct and that all risks concerning Claimant's investments were properly disclosed. Respondents also contended that any losses suffered by Claimant were the result of market conditions.

Respondents maintained that at all times they acted in good faith and in a professional manner. Respondents maintained that Claimant, by his own conduct, has waived all claims which he may have against the Respondents. Respondents further maintained that Claimant did not rely to his detriment on any action or omission attributable to the Respondents.

RELIEF REQUESTED

Claimant, Frank Marotta, requested compensatory damages of more than \$30,000.00; interest based on income that Claimant would have received had his money been invested in prudent and suitable investments; disgorgement of all commissions and mark-ups charged by Respondents; repayment of all margin interest charged to the Claimant; rescission of the securities purchased; and such other relief as the arbitration panel deemed just.

Respondents, Meyers Pollock Robbins, Inc. and James Byrne, requested the Statement of Claim be dismissed in its entirety; costs and expenses of this arbitration, including reasonable attorneys' fees; and such other relief as is just and proper.

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 original remains on file with the NASD.

AWARD

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

1. Respondent, Meyers Pollock Robbins, Inc., is liable and shall pay to Claimant, Frank Marotta, the sum of \$8,000, excluding interest;
2. All claims asserted against Respondent, James Byrne, are dismissed in their entirety;
3. all parties are to bear their own costs, including attorney's fees; and,
4. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Total Forum Fees: \$1,200.00 (3 hearing sessions x \$400.00).

Claimant Frank Marotta is assessed \$600.00 representing one-half of the total forum fees due, less \$400.00 previously deposited, leaving \$200.00 due. Claimant is liable and shall pay to NASD Regulation, Inc. the sum of \$200.00.

Respondent, Meyers Pollock Robbins, Inc. is assessed \$600.00 representing one-half of the total forum fees due. Respondent Meyers Pollock Robbins is liable and shall pay to NASD Regulation, Inc. the sum of \$600.00.

Fees are payable to NASD REGULATION, Inc.

ARBITRATORS' SIGNATURES

David Fogel, Esq.

William Friedman, Esq.
Public Panelist

Theodore Brown
Industry Panelist

Date of Decision: _____

I, David Fogel, 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.

David Fogel, Esq.

I, William Friedman, 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.

William Friedman, Esq.

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

Theodore Brown