

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

Werner C. Hoelscher and
Lena M. Hoelscher

and

95-01761

Names of Respondents

Hanover Sterling & Company, Ltd.,
Lowell Schatzer and
Michael Nnebe

REPRESENTATION OF PARTIES

Werner C. and Lena M. Hoelscher ("Claimants") were represented by Steve M. Williard, Esq. of Meter, Knight & Williams located in Houston, TX.

Michael Nnebe ("Respondent") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about April 10, 1995.

The Submission Agreement of Claimants, Werner C. and Lena M. Hoelscher was signed on April 5, 1995.

The Statement of Answer of Respondent, Michael Nnebe was filed on or about August 24, 1995.

The Submission Agreement of Respondent, Michael Nnebe was signed on August 30, 1995.

HEARING INFORMATION

The hearing was held on January 23, 1996 in Houston, TX for one (1) hearing session.

CASE SUMMARY

In the Statement of Claim, Lena M. and Werner C. Hoelscher ("Hoelscher") alleged that on or about August 30, 1993 they bought 100 shares of Time Warner, Inc. for the sum of \$4,240.00 after repeated phone calls from Michael Nnebe ("Nnebe"), an employee of Hanover Sterling & Company ("Hanover Sterling"). The Hoelschers claimed that they sold the 100 shares of Time Warner on or about November 1, 1993 after repeated phone calls from Nnebe. According to the Claimants, they informed Nnebe when he asked them to make additional investments that they did not want to invest additional funds at that time. Despite recommendations made by Nnebe, the Claimants allegedly told him that they would not invest in Comstock Resources, Inc. without first receiving a prospectus. After receipt of a prospectus, Nnebe executed a purchase order of 1,200 shares of Comstock Resources, Inc. for the Claimants with their consent on or about December 11, 1993. Claimants alleged that Nnebe then sold the 1,200 shares of Comstock Resources, Inc. stock on or about December 14, 1993 without their consent for \$3.25 per share. In addition, Claimants further alleged that Nnebe bought 500 shares of Magellan Restaurants Systems, Inc. on or about December 14, 1993 without authorization.

In the Statement of Answer, Michael Nnebe denied the allegations of wrongdoing contained in the claim alleging that Hoelscher called him a few days after the purchase of Comstock Resources, Inc. stock to tell him to sell out his position before any losses occur. Nnebe contended that during the same conversation, Hoelscher agreed to his suggestion to buy Magellan Restaurants System with the proceeds from the sale of the Comstock Resources, Inc. Nnebe further contended that Hoelscher did not complain until February, 1994.

RELIEF REQUESTED

In the Statement of Claim, Werner C. and Lena M. Hoelscher requested an award in an amount less than \$10,000.00.

In the Statement of Answer, Michael Nnebe requested that the claims asserted against him be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

After reviewing and considering Respondent, Michael Nnebe's motion to dismiss dated August 28, 1995 and the Claimants' response dated September 25, 1995, the arbitrator determined on or about January 4, 1996 that the motion was denied.

At the hearing on January 23, 1996, the Claimants orally stated that all allegations against Respondents, Hanover Sterling & Company, Ltd. and Lowell Schatzer were dismissed without prejudice.

Respondent, Michael Nnebe made an oral motion to exclude the Claimants' documentary evidence pursuant to Section 32(c) of the Code of Arbitration Procedure (the "Code"). After hearing oral arguments by the parties, the arbitrator decided to grant the motion.

The parties have agreed that a handwritten, signed Award may be entered. 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, the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Michael Nnebe is liable for and shall pay to the Claimants, Werner C. and Lena M. Hoelscher the sum of \$2,895.00 in compensatory damages;
2. Respondent, Michael Nnebe is liable for and shall pay to the Claimants the sum of \$2,500.00 in attorneys' fees. In determining to award attorneys' fees, the arbitrator considered the legal authority provided in the Claimants' brief such as ;
3. All relief requested not specifically granted herein is hereby denied in its entirety;
4. The parties shall bear their own costs of arbitration including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$200.00 per hearing session. There was one (1) hearing session x \$200.00 = \$200.00 in forum fees. Pursuant to Section 43(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$75.00 and shall retain as forum fees the hearing session deposit in the amount of \$200.00 previously deposited with the NASD by the Claimants, Werner C. and Lena M. Hoelscher. Respondent, Michael Nnebe is liable for and shall pay to the Claimants, Werner C. and Lena M. Hoelscher the sum of \$275.00 as reimbursement. Pursuant

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reimbursement. Pursuant to Section 45 of the Code, Hanover Sterling & Company, Ltd. is liable for and shall pay to the NASD the sum of \$100.00 for the member surcharge in the amount of \$100.00.

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

Arbitrator's Signature:

Dated:



March 9, 1986

Charles D. Powell, Esq.
Public Arbitrator, Presiding Chair

Date served by the NASD: _____