

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph M. & Pauline A. Apichella

95-03471

Name of Respondents

Robert Dacunto
Michael Dacunto

REPRESENTATION

Claimants Joseph M. and Pauline A. Apichella ("Claimants") appeared pro se.

Respondents Robert Dacunto and Michael Dacunto ("Respondents") were represented by M. David Sayid, Esq., Sayid and Associates, Hackensack, NJ.

CASE INFORMATION

Statement of Claim was filed on July 18, 1995.

Claimants' Submission Agreements were signed on July 14, 1995.

A Joint Statement of Answer was filed by Respondents on August 29, 1995.

Respondent Robert Dacunto's Submission Agreement signed on: August 28, 1995.

Respondent Michael Dacunto did not file an executed Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: June 25, 1996 / one session

Hearing Location: Doubletree Hotel
Baltimore, Maryland

CASE SUMMARY

Claimants, Joseph M. Apichella and Pauline A. Apichella, alleged that Respondents Robert Dacunto and Michael Dacunto, registered representatives previously employed by Hanover Sterling and Co., Ltd., solicited Claimants to purchase, and recommended their investment in, a number of stocks which Claimants contend were unsuitable for Claimant by virtue of being risky and/or illiquid, and/or being inconsistent with Claimants' expressed interests in security and liquidity. Claimants further alleged that Respondents made unauthorized purchases of stocks in their joint account, without consulting with Claimants or securing approval of the purchases. Claimants additionally claimed that Respondents

promised to put a stop-loss order, or automatic sell, on Claimants' account if there was a ten per cent drop in the price of securities in the account. Claimants alleged that Respondents' actions, including a failure to sell securities as promised, resulted in losses to Claimants after Hanover Sterling was suspended from doing business and/or after Hanover Sterling's clearing broker, Adler, Coleman Clearing Corp. entered bankruptcy proceedings.

Respondents, who were acting as partner brokers as to the Claimants' account, contended that they recommended suitable purchases for the Claimants, and made no knowing misrepresentations to Claimants. Respondents contended that all transactions in the Claimants' account were authorized by Claimants. Respondents denied making any promises or agreements concerning any stop-loss or automatic sell procedure. Respondents contended that as of February 24, 1995, the value of the Claimants' account with Hanover Sterling was actually higher than when the account opened in October 1994. On February 24, 1995, Respondents contended, Hanover Sterling was forced to suddenly halt operations, and Respondents were prevented from dealing with Claimants' account. Respondents contended that they had been unaware of any impending problem with Hanover Sterling, and would not have been able to warn or advise the Claimants about conditions unknown to them and beyond their control. Respondents contended that they were not responsible for the losses incurred by Claimants after the account was, by virtue of Hanover Sterling's cessation of operations, removed from their control.

RELIEF REQUESTED

Claimants' Statement of Claim requested damages in the amount of \$27,673.00. At the hearing, Claimants revised the damages and requested an award of \$26,623.00, representing the difference between the funds deposited with Hanover Sterling (\$ 29,673.00) and a later valuation of the securities in the Claimants' account.

In their Answer to the Statement of Claim, Respondents requested that the Statement of Claim be dismissed, and that Respondents have an award in their favor and for costs, fees, expenses and attorney fees in an amount not less than \$ 5,000.00.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

Respondent Michael Dacunto did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code") and will be bound by the rulings of the arbitrator.

AWARD

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

1. The claim of Claimants Joseph M. Apichella and Pauline A. Apichella is denied in its entirety.
2. Each party shall bear their own costs and expenses, including attorney's fees.
3. Any relief not specifically ^{addressed} address herein is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 Sessions x \$300.00 = \$600.00

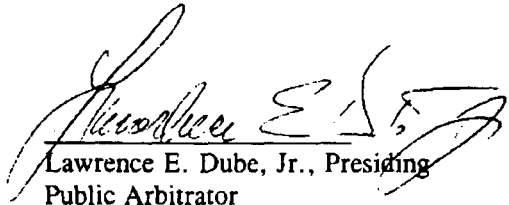
Forum Fees are assessed against Claimant. Claimant shall receive credit for the \$300.00 hearing session deposit previously submitted to the NASD, leaving a net assessment due of \$300.00.

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

DATE

ARBITRATOR'S SIGNATURE

7/2/96


Lawrence E. Dube, Jr., Presiding
Public Arbitrator

Date Decision Served by NASD: July 5, 1996