

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gilbert E. and Esther J. Ciocca

95-03813

Name of Respondents

John L. Lembo, III
Hanover, Sterling & Company, LTD. (Bankrupt)

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 8, 1995, Claimants Gilbert E. and Esther J. Ciocca ("Claimants"), who appeared Pro Se, alleged that Respondent John L. Lembo III ("Lembo") an account executive at Hanover, Sterling & Co., Ltd. ("Hanover Sterling") sold them 200 shares of Guinness PLC Ord. ("GURSF") on April 19, 1993. Claimants further alleged that on September 30, 1994, they decided to sell GURSF and close their account. Claimants asserted that they called Lembo numerous times in an attempt to sell and close their account, but were unable to get through to him. Claimants further asserted that in frustration they sought help from Christine Baldonieri ("Ms. Baldonieri") manager of their local bank's brokerage department in an attempt to get in contact with Lembo. Claimants also asserted that when Lembo spoke with Ms. Baldonieri he promised to sell the 200 shares of GURSF and send them a check for the balance of their account. Claimants contended that a week later they received a confirmation for the sale of 200 GURSF for \$1,177.00. Claimants further contended that they wrote instruction on the confirmation to close the account and mail them a check for the balance. Claimants also contended that they never received the proceeds from the sale. Claimants alleged that they also received a confirmation from a backdated trade where Lembo had purchased 225 shares of Best Resource Inc. ("BRI"), using nearly the exact amount of funds from the sale of GURSF. Claimants further alleged that Ms. Baldonieri spoke with Lembo again, wherein he assured her that the confirmation of the 225 share of BRI was a mistake and that he would correct the error, close the account, and mail them the proceeds. Claimants also alleged that they never received the proceeds. Claimants asserted that literally days after Ms. Baldonieri spoke with Lembo the second time, Hanover Sterling was closed by the NASD. Claimants further asserted that their account is now assigned to Lew Lieberbaum and Co., Inc., with a cash balance of \$77.59 and 225 shares of BRI, which is practically worthless. Claimants also asserted that regardless of how the 225 shares of BRI came into their account, they never authorized the purchase of BRI.

Respondent John Lembo III, failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Gilbert E. and Esther J. Ciocca, requested \$1,177.00 in actual damages.

Respondent John Lembo III filed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, Respondent John Lembo III was served by regular mail and was given an opportunity to respond, which it failed to do. In addition, service of the overdue answer notice and notification of the Arbitrator's identity was effected upon the Respondent John Lembo III, as evidenced by the signed returned signature card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent John Lembo III had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound-by the arbitrator's ruling and determination.

AWARD

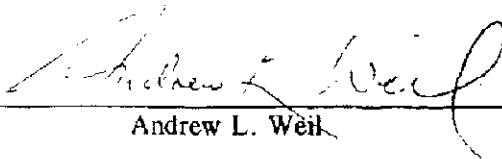
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Andrew L. Weil, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Gilbert E. and Esther J. Ciocca on February 16, 1996, and not by the Respondent John Lembo III as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent John Lembo III is liable and shall pay to the Claimants Gilbert E. and Esther J. Ciocca \$1253.72 in actual damages.
2. Respondent John Lembo III is liable and shall pay to the Claimants Gilbert E. and Esther J. Ciocca a simple interest rate of 8% per annum from January 26, 1995 to the date of payment of the award.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent John Lembo III is liable and shall pay \$50.00 to the Claimants Gilbert E. and Esther J. Ciocca, as reimbursement of the filing fee.

AFFIRMATION

I, **ANDREW L. WEIL**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Andrew L. Weil

DATE OF DECISION: September 3, 1996