

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ann Trischetta

95-05579

Name of Respondents

Alex Brown & Sons Incorporated
Seaboard Securities, Inc.
Herbert Gurwitt

REPRESENTATION

For Claimant Ann Trischetta ("Claimant") appeared George V. Cornell, III of the law firm George V. Cornell, III and Associates located in Staten Island, New York

For Respondent Alex Brown & Sons Incorporated ("Alex Brown") appeared Rebecca S. Beall, Esq. of the firm Alex Brown & Sons Incorporated located in Baltimore, Maryland.

For Respondent Seaboard Securities, Inc. ("Seaboard") appeared William S. Clarke, Esq. a sole practitioner located in Princeton, New Jersey.

Respondent Herbert Gurwitt did not appear at the hearing.

CASE INFORMATION

Statement of Claim was filed on: November 28, 1995.

Claimant's Submission Agreement was signed on: November 3, 1995.

Respondent Alex Brown's Statement of Answer was filed on: January 29, 1996.

Respondent Alex Brown's Submission Agreement was signed on: January 29, 1996.

Respondent Seaboard's Statement of Answer was filed on: February 2, 1996.

Respondent Seaboard's Submission Agreement was signed on: February 1, 1996.

Respondent Seaboard's Third-Party Claim against Herbert Gurwitt was filed on: June 5, 1996.

Respondent Seaboard's Amended Statement of Answer was filed on: June 5, 1996.

Respondent Herbert Gurwitt did not file a Statement of Answer or an executed Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: September 23, 1996 - 2 Sessions

CASE SUMMARY

Claimant alleged that on June 4, 1993, she purchased 72,900 shares of Panther Mountain Water Park, Inc. ("Panther Mountain") from Herbert Gurwitt ("Gurwitt"), who was a registered representative with Barret Day Securities ("Barret Day"). Claimant further alleged that on June 17, 1994 Gurwitt announced that he was moving to Seaboard, and she transferred her Barret Day account over to Respondent Seaboard. Claimant also alleged that her Panther Mountain stock was delivered to Seaboard when her account transferred over.

Claimant asserted that on April 4, 1995 she called Gurwitt and placed an order to sell the 72,900 shares of Panther Mountain, which was selling at \$.68 a share. Claimant further asserted that when she called Gurwitt the next day to confirm the sell order, he referred her to Angelo Gibilisco ("Gibilisco") of Seaboard's compliance department. Claimant also asserted that Mr. Gibilisco informed her that there was no stock held in her account. Claimant further alleged that she replied to this statement by telling Mr. Gibilisco that she had asked Mr. Gurwitt for statements on her account, but had never received them. Claimant contended that over the next four days there were numerous phone calls made between Gibilisco and herself. Claimant further contended that Gibilisco informed her that he believed that the stock in question had been credited to her daughter-in-law Frances Trischetta. Claimant also contended that her daughter-in-law did indeed receive a stock certificate containing her 72,900 shares of Panther Stock. Claimant alleged that her daughter-in-law then informed Gibilisco about this discrepancy in writing.

Claimant further alleged that Seaboard corrected this error and mailed the Panther Mountain stock certificates to her on April 28, 1995. Claimant also alleged that she did not receive the certificates until approximately a week later. Claimant asserted that when she called Gurwitt to sell the stock, she was advised that it had dropped in value to \$.24 a share and that he could not sell the shares without having the certificates in his hands. Claimant further asserted that she sent the certificates via Federal Express next day delivery. Claimant also asserted that Mr. Gurwitt sold 62,900 shares on May 15, 1995 and 10,000 shares on May 22, 1995. Claimant contended that as a result of Seaboard's error she lost \$37,638.00.

Respondent Seaboard maintained that prior to June 21, 1994, Claimant maintained a securities account with Barret Day. Respondent further maintained that since prior to June 1994, its customer accounts have been cleared by on a fully disclosed basis through Alex Brown & Sons, Inc. ("Alex Brown"). Respondent contended that accordingly, it never had custody of Claimant's shares. Respondent maintained that during the period of June 1994 through March 1995, Claimant did not receive any statements about her account from Alex Brown. Respondent contended that Claimant never contacted any supervisory personnel at Seaboard or Alex Brown, concerning her missing statements.

Respondent further contended that on April 10, 1995, within three business days after Claimant brought her problem to the attention of Seaboard, Gibilisco had resolved the matter and told the Claimant that her daughter-in-law had her shares. Respondent also contended that Gibilisco advised Claimant that she could have caused her daughter-in-law to return the certificates to Seaboard or virtually any other broker with instructions to sell 72,900 shares of Panther Mountain for her account. Respondent maintained that Claimant did not and chose to proceed in another manner for which it cannot be held responsible.

Respondent maintained that Claimant signed two forms where her account number with Alex Brown was incorrectly stated and she failed to either insert the correct account number or bring this error to anyone's attention at either Seaboard or Alex Brown.

Respondent Seaboard, in their Third-Party Claim against Herbert Gurwitt, alleged that Claimant's Statement of Claim appears to assert possible violations of NASD Rules and Securities Laws which, if proven, may expose it to liability as a consequence of the activities engaged by Mr. Gurwitt. Respondent further maintained that if it is found liable to Claimant, such liability will result from the conduct of Mr. Gurwitt's violation of the NASD rules and Securities Laws.

Respondent Herbert Gurwitt did not file a Statement of Answer to Respondent Seaboard Securities, Inc.'s Third-Party Claim.

RELIEF REQUESTED

Claimant Ann Trischetta requested: (1) \$37,638.00 in compensatory damages; (2) interest to be determined by the Panel; (3) Punitive damages; (4) any other relief the Panel deems, just, proper and equitable.

Respondent Seaboard Securities, Inc. requested: (1) the claims of the Claimant be denied in their entirety; (2) that Respondent Herbert Gurwitt be found liable to it for any amount for which it is found to be liable to Claimant; (3) for filing and other fees in bringing this Third-Party claim.

Respondent Herbert Gurwitt did not file a Statement of Answer to Respondent Seaboard's Third-Party Claim.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated September 19, 1996, the NASD was advised that Claimant had dismissed all claims against Respondent Alex Brown & Son, Inc.

The arbitration panel made the following rulings concerning Respondent Herbert Gurwitt, who did not file a Statement of Answer and a Submission Agreement.

1. Pursuant to Section 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Herbert Gurwitt was a person associated with a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Mr. Gurwitt pursuant to Section 10201 of the Code.
3. In view of (2) above, Herbert Gurwitt was required to file with the NASD a Statement of Answer and an executed Submission Agreement pursuant to Section 10314(b). In this regard, the panel found that the Statement of Claim was properly served pursuant to Section 10314(b) of the Code.
4. The panel found that the NASD, pursuant to Sections 10310, 10315, 10318 of the Code, provided Herbert Gurwitt with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with these

hearings without Herbert Gurwitt whose absence was unexcused.

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 originals remain on file with the NASD.

AWARD

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

1. Respondent Seaboard Securities, Inc. be and hereby is liable and shall pay to the Claimant Ann Trischetta the sum \$24,960.96, inclusive of interest.
2. Respondent Seaboard Securities, Inc. claims against Respondent Herbert Gurwitt are dismissed without prejudice.
3. Claimant's request for punitive damages is denied.
4. Requests for attorney's fees are denied.
5. Respondent Seaboard Securities, Inc. be and hereby liable for all costs associated with the appearance of Angelo Gibilisco.
6. All other claims be and hereby are denied.

FORUM FEES


Pursuant to Section 10332 and 10333 of the NASD Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$120.00 non-refundable filing fee previously deposited by the Claimant and the \$500.00 non-refundable filing fee previously deposited by Respondent Seaboard and have assessed the following Forum Fees.

2 Sessions X \$400.00	=	\$800.00
minus hearing deposit	=	<u>\$400.00</u>
Total outstanding	=	\$400.00

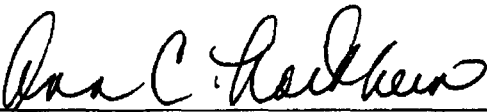
Respondent Seaboard Securities, Inc. be and hereby is liable for the sum of \$800.00, representing the total amount of forum fees assessed. Therefore, Respondent Seaboard Securities, Inc. shall pay to the NASD \$400.00. Respondent Seaboard Securities, Inc. be and hereby liable and shall pay to the Claimant the sum of \$400.00 representing reimbursement of the filing fee previously deposited by Claimant.

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

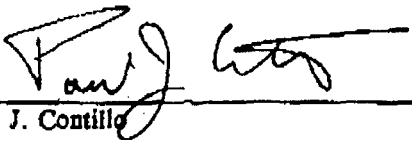
ARBITRATOR'S SIGNATURES


Ann C. Northern, Esq.

I, Ann C. Northern, do hereby affirm that this is my decision in the above captioned matter.


Ann C. Northern, Esq.

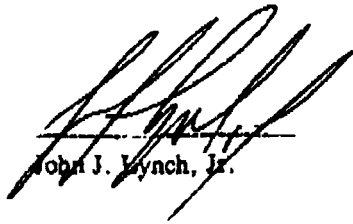
Date of Decision: November 14, 1996


Paul J. Contillo

I, Paul J. Contillo, do hereby affirm that this is my decision in the above captioned matter.

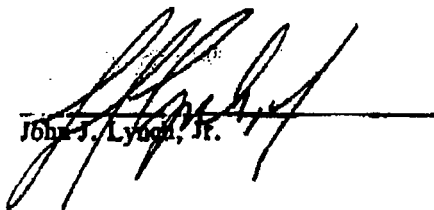

Paul J. Contillo

Date of Decision: November 14, 1996



John J. Lynch, Jr.

I, John J. Lynch, Jr., do hereby affirm that this is my decision in the above captioned matter.



John J. Lynch, Jr.

Date of Decision: November 14, 1996