

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Brian and Lorraine O'Connor

95-06059

Name of Respondents

**Buttonwood Securities, Inc.
Edward A. McKay, Jr.
Lawrence J. Rosen
Sal Waisbrut
Cantella & Company**

REPRESENTATION

For Claimants: Richard Groner, Esq. of Groner & Schieb, Sarasota, FL.

Respondent Lawrence J. Rosen appeared pro se.

For Respondent Cantella & Company: Peter Coppinger, Esq. of Gadsby & Hannah, P.A., Boston, MA.

Respondents Buttonwood Securities, Inc., Edward A. McKay, Jr., and Sal Waisbrut did not appear (see "Other Issues").

CASE INFORMATION

Statement of Claim filed: December 27, 1995.

Claimant Brian O'Connor's Submission Agreement signed on: December 15, 1995.

Claimant Lorraine O'Connor's Submission Agreement signed on: December 15, 1995.

Statement of Answer filed by Respondent Lawrence J. Rosen on: March 29, 1996.

Statement of Answer filed by Respondent Cantella & Company on: February 29, 1996.

Respondent Cantella & Company filed a cross claim against Respondent Buttonwood Securities, Inc. and/or its employees on: February 29, 1996.

Respondent Cantella & Company's Submission Agreement signed on: February 28, 1996.

Respondents Lawrence J. Rosen, Buttonwood Securities, Inc., Edward A. McKay, Jr., and Sal Waisbrut did not execute Submission Agreements or submit Statements of Answer.

HEARING INFORMATION

On October 16, 1996 a telephonic pre-hearing conference lasting one session was conducted.

On May 29, 1997 a hearing lasting one session was conducted in Tampa, Florida.

On July 28, 1997 a telephonic pre-hearing conference lasting one session was conducted.

On September 25, 1997 a final hearing lasting two sessions was conducted telephonically.

CASE SUMMARY

Claimants alleged that in late 1994, Respondent Sal Waisbrut solicited the Claimants to purchase shares in Wincanton Corporation and represented Wincanton Corporation as being a guaranteed safe investment; that at the time Respondent Waisbrut solicited Claimants he was employed by Respondent Securities Planners, Inc., which later became known as Buttonwood Securities, Inc., which was owned and controlled by Respondent Edward A. McKay, Jr. who controlled and actively aided Respondent Waisbrut; and, that through the strenuous and misleading efforts of the Respondents, the Claimants invested Sixty Thousand Dollars (\$60,000.00) in Wincanton Corporation.

Claimants further alleged that when the price of Wincanton Corporation tumbled they immediately communicated their desire to Respondent Waisbrut to sell their positions in Wincanton Corporation before a total loss occurred; that Respondent Waisbrut told Claimants that the stock of Wincanton Corporation had split and that was the reason for the drastic fall in price; that once the truth about Wincanton Corporation was revealed the Claimants had lost their entire investment.

Respondents Lawrence J. Rosen and Cantella & Company denied the allegations in the Statement of Claim.

RELIEF REQUESTED

Claimants requested damages of Sixty Thousand Dollars (\$60,000.00) plus statutory interest, attorney's fees and costs.

Respondent Lawrence J. Rosen requested dismissal of the Statement of Claim and that the arbitration panel enter an order expunging all references to this arbitration from his CRD record.

Respondent Cantella & Company requested dismissal of the Statement of Claim.

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 originals remain on file with NASD Regulation, Inc.

On January 21, 1997 Claimants withdrew with prejudice all claims against Respondent Cantella & Company.

On July 7, 1997 Respondent Cantella & Company withdrew without prejudice its cross claim against Respondent Buttonwood Securities, Inc. and/or its employees.

Respondents Buttonwood Securities, Inc., Edward A. McKay, Jr., and Sal Waisbrut did not appear for the hearing held on September 25, 1997. However, pursuant to Rules 10101 and 10301 of the Code of Arbitration Procedure, the arbitration panel found subject matter jurisdiction and personal jurisdiction over the parties and this entire controversy.

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. The Statement of Claim against Respondent Lawrence J. Rosen is dismissed with prejudice.
2. All references to this arbitration shall be expunged from the CRD record of Lawrence J. Rosen.
3. Respondents Buttonwood Securities, Inc., Edward A. McKay, Jr., and Sal Waisbrut are found liable and shall pay, jointly and severally, to the Claimants damages in the sum of \$10,104.95, without pre-judgment interest.
4. Claimants' request for attorney's fees shall be referred to a court of competent jurisdiction for a determination of entitlement to and amount, if any, of attorney's fees to be awarded.

5. Claimants' requests for fees and costs are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the sum of \$2,500.00 (two pre-hearing conferences x \$500.00 plus two hearing sessions x \$500.00).

1. Respondents Buttonwood Securities, Inc., Edward A. McKay, Jr., and Sal Walsbrut are hereby assessed, jointly and severally, \$2,500.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by the Claimants in partial satisfaction thereof and the \$600.00 previously deposited by Respondent Cantella & Company in partial satisfaction thereof leaving a balance due of \$1,400.00.

2. NASD Regulation, Inc. shall retain the \$300.00 member surcharge previously paid by Respondent Cantella & Company.

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

Concurring Arbitrators' Signatures:

_____/S/
Warren A. Forest
Industry Arbitrator

_____/S/
Dolores Alfano
Public Arbitrator

Dissenting Arbitrator Signature:

_____/S/
James A. Smith, IV
Public Arbitrator

11/19/97
Date of Decision: _____