

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

The Boston Group, L.P.

96-00409

Name of Respondent

Gerard E. Burns

REPRESENTATION

For Claimant: Richard P. Ryder, Esq., Maplewood, New Jersey.

The Respondent Gerard E. Burns did not appear.

CASE INFORMATION

Statement of Claim filed: January 29, 1996.

Amended Statement of Claim filed: June 13, 1996.

Claimant's Submission Agreement signed on: January 25, 1996.

The Respondent Gerard E. Burns did not execute a Submission Agreement or submit a Statement of Answer as required pursuant to Section 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

Two hearing sessions were conducted in this matter on September 17, 1996, in Tampa, Florida.

CASE SUMMARY

Claimant alleged that beginning in late November and continuing into mid December 1995, Respondent Burns embarked upon a series of purchases focused upon three stocks, which involved purchase obligations totalling approximately \$234,000.00. Claimant next alleged that full payment for his first purchase was made via wire transfer which was authorized by the Respondent. Thereafter, from about December 11 through December 21, 1995, Respondent Burns tendered approximately 11 checks to settle his purchase obligations with the Claimant.

Claimant next alleged that seven of these checks totalling \$194,249.65 were returned unpaid at varying times during the latter half of December 1995 and the early part of January 1996, and each check was returned with the designation "insufficient funds." Claimant next alleged that the Respondent continuously represented to the Claimant that his purchase obligations would be paid, but by year-end it was clear these representations were false and the Claimant began to liquidate securities in accordance with the customer agreement executed by the Respondent, and applicable securities regulations. Claimant next alleged that liquidation of the securities has not produced sufficient monies to cover the debit balance created by the returned checks and written demand has been tendered by the Claimant to the Respondent.

Claimant next alleged that Respondent, in apparent response to the filing of the Statement of Claim and Claimant's demands for payment, caused two \$10,000.00 checks to be sent to Claimant, along with a written promise to pay the full debt. Claimant alleged that said checks were returned by the drawer bank unpaid and the promise to pay was breached.

Claimant next alleged that it has obtained evidence that Respondent was engaged in purchase-and-renege activities at a number of other brokerage firms, similar to those conducted in his securities account with Claimant, during the approximate period October through December 1995. Claimant alleged that these activities disclose fraudulent conduct on Respondent's behalf, not just a breach of contract to pay Claimant for stock. Claimant next alleged that Respondent's actions were part and parcel of a series of "incidents" which constitute a "pattern of criminal activity" under Florida's Racketeering and Corrupt Organizations Act ("RICO"), Section 772.102, Florida Statutes.

RELIEF REQUESTED

Claimant requested damages against the Respondent as follows:

- (a) at the hearing the Claimant amended his compensatory damage claim to \$35,982.18;
- (b) attorneys' fees as provided in the customer agreement;
- (c) treble damages and attorneys' fees pursuant to Florida's RICO statute;
- (d) punitive damages, in an amount equal to three times compensatory damages, of \$225,000.00;
- (e) pre-Award interest from the date of the filing through the date of the Award;
- (f) post-Award interest from the date of the Award until the sums awarded are paid by Respondent; and,
- (g) costs and expenses for disbursements incident to the transportation and lodging of necessary witnesses, plus reimbursable forum fees.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel determined that Respondent is known as Gerard "Gerry" E. Burns, Gerard E. Burns, Gerald E. Burns and Gerard M. Burns.

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 original(s) remain on file with the NASD.

In accordance with the Customer Agreement which the Respondent signed and Sections 10101

and 10301 of the Code of Arbitration Procedure ("Code"), the arbitration panel determined that it had jurisdiction over the Respondent and this controversy.

Next, the arbitration panel found that the Statement of Claim was properly served on the Respondent in accordance with Section 10314(a) of the Code and the Respondent failed to submit a Statement of Answer and a properly executed submission agreement.

In addition, in accordance with Sections 10310, 10315 and 10318 of the Code, the arbitration panel found that the NASD provided the Respondent with "due notice" of the hearing conducted in this matter by regular and certified mail. The arbitration panel, therefore, determined to proceed with the hearing without Respondent, whose absence was unexcused.

AWARD

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

1. The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$38,674.30, inclusive of pre-judgment interest.
2. The Respondent be and hereby is liable and shall pay to the Claimant post-judgment interest at the rate of 10% per annum from the date of decision until the date of payment of the Award.
3. The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$107,946.54 representing treble damages pursuant to Florida's Racketeering and Corrupt Organizations Act ("RICO"), Section 772.102, Florida Statutes.
4. The Claimant's request for punitive damages is denied.
5. The Respondent be and hereby is liable and shall pay to the Claimant attorneys' fees as determined by a court of competent jurisdiction.
6. The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$1,550.00 representing reimbursement of the fees previously paid by the Claimant to the NASD.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitration panel has assessed forum fees in the sum of \$2,000.00 (2 sessions x \$1000.00).

The Respondent is assessed the sum of \$2,000.00 for which the NASD shall retain the \$1050.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to the NASD of \$950.00.

The NASD shall retain the \$500.00 nonrefundable filing fee previously paid by the Claimant to the NASD.

The Respondent shall reimburse the Claimant the amounts of \$1,050.00 previously deposited hearing session deposit plus the \$500.00 previously paid filing fee.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

John P. Cullem, Esq.

Public

/s/

Bruce W. Harting

Public

/s/

Sean T. Wright

Industry

November 13, 1996

Date of Decision: _____