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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Randy Goben and Katherine Goben,

Claimants,

and

No. 96-00565

Sterling Foster & Company Incorporated, Clayton Sontag,
Jason Deblin, and Mario Rodriguez,

Respondents.

REPRESENTATION OF PARTIES

Claimants, Randy Goben and Katherine Goben, were represented by Kurt A. Harper, Esquire of Sherwood & Harper, Attorneys at Law, located in Wichita, Kansas.

Respondent Sterling Foster & Company Incorporated was represented in pleadings by Bernstein & Wasserman, located in New York, New York. Respondent Sterling Foster & Company Incorporated was not represented at the hearing in this matter.

Respondents Clayton Sontag and Jason Deblin were represented in pleadings by Bernstein & Wasserman, located in New York, New York. Respondents Clayton Sontag and Jason Deblin were represented at the hearing in this matter by Barry D. Estell, Esq., Mission, Kansas.

Respondent Mario Rodriguez was represented in pleadings by Bernstein & Wasserman, located in New York, New York. Respondent Mario Rodriguez was represented at the hearing in this matter pro se.

CASE INFORMATION

Randy Goben and Katherine Goben's Statement of Claim was filed on or about February 7, 1996.

Randy Goben and Katherine Goben's Submission Agreement was signed on January 25, 1996.

Sterling Foster & Company Incorporated, Clayton Sontag, Jason Deblin, and Mario Rodriguez's Statement of Answer was filed on or about April 3, 1996.

Sterling Foster & Company Incorporated's Submission Agreement was signed on March 19, 1996 by Edmund P. Heeney, Director of Compliance of Sterling Foster & Co. Inc.

Clayton Sontag's Submission Agreement was signed on March 19, 1996.

Jason Deblin's Submission Agreement was signed on March 19, 1996.

Mario Rodriguez's Submission Agreement was signed on March 19, 1996.

HEARING INFORMATION

The hearing was held on August 12, 1997 in Kansas City, Missouri, for two (2) sessions.

CASE SUMMARY

Claimants, Randy Goben and Katherine Goben (hereinafter collectively referred to as "Claimants"), alleged that Respondents Sterling Foster & Company Incorporated ("Sterling") and its registered representatives, Clayton Sontag, Jason Deblin, and Mario Rodriguez (hereinafter collectively referred to as "Respondents"), sold them stock by making false statements and omitting material facts, and failed to execute sell orders. According to Claimants, Jason Deblin falsely stated that Lasergate Systems, Incorporated had experienced good profits, and stated that the price of Lasergate stock was going up. Based on these representations, Claimants asserted, they agreed to purchase \$10,000 worth of Lasergate stock on or about April 19, 1995, but Jason Deblin and Sterling executed a trade for 10,000 shares of the stock at a total price of \$86,262. Claimants further stated that on or about April 20, 1995, again based on the positive representations of Respondents, they authorized the purchase of an additional \$15,000 worth of Lasergate stock, and Respondents instead executed a trade for 15,000 shares of the stock for a total purchase price of \$138,762. Claimants alleged that on several occasions between April 20 and May 20, 1995, they requested that Jason Deblin sell their shares in Lasergate, but he persistently refused to sell such shares. Claimants further asserted that after the price of the Lasergate stock declined, Respondents represented that it was an appropriate time to sell the Lasergate stock, and that Advanced Voice Technologies securities would provide the opportunity to recover the losses on the account. Again based on Respondents representations, according to Claimants, they authorized the sale of 20,000 shares of Lasergate and the purchase of 30,000 shares of Advanced Voice Technologies on the 24th and 25th of October 1995. Claimants stated that the total amount invested in Advanced Voice Technologies was \$112,512 and that shares of Advanced Voice Technologies began to decline in value thereafter.

Claimants asserted the following causes of action: (1) violations of the Kansas Securities Act, K.S.A. 17-1253; (2) violations of § 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder; (3) § 12(2) of the Securities Act of 1933; (4) common law violations and right to

punitive damages; and (5) negligence.

Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. Respondents stated that Randy Goben was an active investor who was kept abreast of all investments in his Sterling account. Respondents further stated that each of these investments was authorized and directed by Randy Goben after he was fully and accurately apprised of all risks by Respondents. Respondents contended that Randy Goben received confirmation statements for each stock transaction and regular monthly statements, which are conclusive if not objected to in writing within five and ten days, respectively, after mailing. Randy Goben paid for each transaction executed on his behalf and at his direction, Respondents added. Respondents also asserted various affirmative defenses.

RELIEF REQUESTED

Claimants, Randy Goben and Katherine Goben, requested an award for: compensatory damages of \$200,000 as of January 17, 1996; interest at the rate of 15% per annum thereafter; punitive damages; and attorney fees pursuant to the Kansas Securities Act, the Securities Act of 1933, and the Securities Exchange Act of 1934.

Respondents, Sterling Foster & Company Incorporated, Clayton Sontag, Jason Deblin, and Mario Rodriguez, requested that the claims asserted against them be dismissed with prejudice and that they be awarded their costs, expenses, and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Gregory Curley, Esquire of Law Office of Joseph D'Elia, located in Huntington, New York, was present at the commencement of the hearing in this matter and requested a postponement on behalf of Respondent Sterling Foster & Company Incorporated. The undersigned arbitrators denied this motion, after which Gregory Curley departed the hearing.

Upon review of the file and the representations made by/on behalf of Claimants, Randy Goben and Katherine Goben, the undersigned arbitrators have determined that Respondent Sterling Foster & Company Incorporated has been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Sterling Foster & Company Incorporated had received due notice of the hearing as required under § 10318 of the Code and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

On or about April 17, 1997, Claimants, Randy Goben and Katherine Goben, moved to add an additional respondent. After careful consideration of this motion and Respondent Sterling Foster

& Company Incorporated's opposition, the undersigned arbitrators denied the motion.

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 claims of Claimants Randy and Katherine Goben against Respondents Sterling Foster & Company, Inc., Clayton Sontag, Jason Deblin and Mario Rodriguez, and each of them, are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session. There were no pre-hearing conferences and there were two (2) hearing sessions x \$750 = \$1,500 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and shall retain as forum fees the hearing session deposit of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Randy Goben and Katherine Goben.

Pursuant to § 10333 of the Code, Respondent Sterling Foster & Company Incorporated is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$350.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Sterling Foster & Company Incorporated.

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Additional forum fees in the amount of \$750 are assessed by the arbitrators against Sterling Foster & Co., Inc.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Robert A. Babcock
Robert A. Babcock, Esquire
Chairperson
Public Arbitrator

/s/

September 19, 1997
Dated:

Daniel L. Fowler
Daniel L. Fowler, Esquire
Panelist
Public Arbitrator

/s/

September 23, 1997
Dated:

Lonnie L. Cunningham
Lonnie L. Cunningham
Panelist
Industry Arbitrator

/s/

September 23, 1997
Dated: