

NASD Regulation, Inc. Award

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Charles W. McDonald

and

96-00715

Name of Respondents

Giuseppe Temperino,

Mario Lucio Giovannini,

Lowell Charles Schatzer, and

Hannover Sterling & Co

REPRESENTATION OF PARTIES

Charles W. McDonald ("Claimant") was represented by Martin H. Aussenberg, Esq., Law offices of Martin H. Aussenberg PC, Memphis, Tennessee.

Giuseppe Temperino ("Temperino") was originally represented by Darren Lampert, Esq., of Lampert & Lampert, New York, New York. On February 4, 1998, notice was received that Temperino was represented by Michael Uffla, Esq., of Mure & Carone, P.C., Brooklyn, New York.

Mario Lucio Giovannini ("Giovannini") was represented in the pleadings stage by Howard A. Tescher, Esq., of Kipnis Tescher Uppman Valinsky & Kain, Fort Lauderdale, Florida. Giovannini failed to appear at the hearing.

Lowell Charles Schatzer ("Schatzer") was not represented by counsel, and failed to appear at the hearing.

Hannover Sterling & Co ("HSC") was not represented by counsel, and failed to appear at the hearing.

CASE INFORMATION

Claimant filed the Statement of Claim on or about February 16, 1996, and signed the Submission Agreement on February 13, 1996. On or about April 7, 1997, Claimant filed a Supplement to his Statement of Claim.

Temperino filed a Statement of Answer on or about April 11, 1996, and signed a Submission Agreement on April 3, 1996.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-00118
Award Page 2 of 4

Giovannini filed a Statement of Answer on or about July 26, 1996, and signed a Submission Agreement on July 23, 1996.

NASD Regulation, Inc. Office of Dispute Resolution does not have a record of Lowell Schatzer and HSC having filed Answers or Submission Agreements.

HEARING INFORMATION

The Arbitration Panel held a hearing on February 4, 1998 in Memphis, Tennessee for a total of one (1) session.

CASE SUMMARY

Claimant alleged that Temperino, Giovannini, Schatzer, and HSC: Violated the Tennessee Securities Act, sold an unregistered security in Tennessee to the Claimant in violation of Tennessee law; made false statements material fact to the Claimant; failed to make statements to the Claimant or disclose information that would have been necessary in order to make statements they did make not misleading, in an attempt to induce Claimant to purchase securities, and which had the effect of so inducing the Claimant, and on which the Claimant relied to his detriment; committed fraud under federal and Tennessee securities laws; violated Article III, Sections 1, 2, 8 and 27 of the NASD's Rules of Fair Practice; violated the federal RICO statute; committed unfair or deceptive acts under the Tennessee Consumer Protection Act; committed common law fraud; committed negligent and intentional misrepresentation and deceit; breached their fiduciary duty; breached their covenant of good faith and fair dealing; and are liable for conversion. Claimant alleged that HSC and Schatzer failed to reasonably supervise the activities of Temperino and Giovannini; and acted as controlling persons of Temperino and Giovannini within the meaning of the federal securities laws, and are liable for their conduct under the common law principle of respondeat superior. The allegations arose out of transactions in American Toys stock and Eagle Vision stock.

Temperino denied the allegations in the Statement of Claim, except to admit that Claimant purchased securities from HSC. Temperino also asserted the following affirmative defenses: Claimant's allegations are insufficiently particular to adequately apprise Temperino of the claims asserted against him and therefore preclude effective defense of those claims; Claimant is barred from recovery by reason of his failure to timely object to the transactions complained of as required by contractual language set forth in Confirmation Notices received by Claimant subsequent to each transaction; Claimant's losses, if any, were caused or contributed to by Claimant's own fault or conduct, and not by Respondent; Claimant has failed to state a claim upon which relief can be granted against Temperino; the damages sought by Claimant are speculative, remote and unsupported by competent evidence; Claimant is barred from recovery by the doctrines of laches, waiver and ratification; losses, if any, were incurred by Claimant due to market forces, events and/or occurrences outside the authority or beyond the control of Temperino; and Claimant failed to allege any material facts to support his claim for fraud.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-00715
Award Page 3 of 4

Unless otherwise admitted in his Answer, Giovannini denied the allegations set forth in the Statement of Claim. In addition, Giovannini asserted the following affirmative defenses: Claimant is a sophisticated investor extremely knowledgeable with the trading of low priced stocks; Claimant's net worth is substantial and that he is otherwise a sophisticated investor; Giovannini is not responsible nor liable for any claims made by Claimant which occurred prior to or after the establishment of a relationship with Giovannini; Claimant failed to mitigate his damages; Giovannini is not responsible in the decline in the value of securities that Claimant purchased caused by market forces; Claimant has failed to state a cause of action upon which relief can be granted; and Claimant's Statement of Claim is defective in that he has incorporated by reference each cause of action into the other.

RELIEF REQUESTED

Claimant requested an award in the amount of the following: \$55,000 loss, trebled, if appropriate, under the provisions of the Tennessee Consumer Protection Act and/or the federal RICO statute; lost opportunity cost; interest; attorney's fees; forum and filing fees and deposits, as well as all other costs and expenses incident to this matter.

Temperino requested that Claimant's claims be dismissed in their entirety, and for such other relief as is just.

Giovannini requested entry of an Award in his favor against the Claimant, together with the assessment of forum fees against the Claimant, and for such other and further relief that the arbitrators deem just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On April 22, 1997, the panel granted Claimant's Request to File Supplement to Statement of Claim which was filed with the NASD Regulation, Inc. Office of Dispute Resolution on or about April 7, 1997.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Mario Lucio Giovannini, Lowell Charles Schatzer, and Hannover Sterling & Co. has been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents Mario Lucio Giovannini, Lowell Charles Schatzer, and Hannover Sterling & Co. had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

At the hearing, the arbitrators were notified by Claimant's counsel of a settlement between Claimant and Temperino. Due to the settlement, Temperino did not participate in the hearing.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-00715
Award Page 4 of 4

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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

Respondents Mario Lucio Giovannini, Lowell Charles Schatzer, and Hannover Sterling & Co. Are jointly and severally liable for, and must pay to the Claimant the following as an award of his claims made herein: Damages (trebled) of \$167,785.65; interest of \$18,709.25; and attorney's fee and expenses of \$23,422.00.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There was one (1) hearing sessions x \$750 = \$750 in forum fees. Pursuant to Rule 10332(b) of 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Forum fees in the amount of \$750.00 are assessed by the arbitrators jointly and severally against: Mario Lucio Giovannini, Lowell Charles Schatzer, and Hannover Sterling & Co. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Jack F. Marlow

/s/

March 30, 1998

Jack F. Marlow

Public Arbitrator, Presiding Chair

J. Maxwell Williams

/s/

March 30, 1998

J. Maxwell Williams

Public Arbitrator

Yvonia A. Foster

/s/

March 30, 1998

Yvonia A. Foster

Industry Arbitrator