

NASD REGULATION, INC. AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant(s)

Paul F. and Anne M. Fondacaro
Paul F. Fondacaro

96-00968

Name of Respondent(s)

Beacon Securities, Inc.
Andrew Cohen
Gary Donahue

REPRESENTATION

For claimants Paul F. and Anne M. Fondacaro ("Claimants") appeared Jeffrey Plotkin, Esq., of Plotkin & Manak, located in New York, New York.

Respondent Beacon Securities ("Beacon") did not enter an appearance. Respondent Andrew Cohen ("Cohen") did not enter an appearance. Respondent Gary Donahue ("Donahue") entered an appearance pro se.

CASE INFORMATION

Statement of Claim filed: March 4, 1996.

Claimant's Submission Agreement signed on: March 1, 1996.

Respondents Beacon and Cohen did not file a Statement of Answer.

Respondent Donahue's Statement of Answer filed on: August 6, 1996.

Respondents Beacon, Cohen and Donahue did not execute a Submission Agreement as required by Section 10302 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions: December 11, 1996 — 1 session
 December 12, 1996 — 2 sessions

The hearings were held in the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that respondent Cohen, while employed as a broker at Beacon, a defunct penny stock broker-dealer, used high pressure sales practices to entice claimants into investing \$155,000 in speculative and illiquid penny stocks. Claimants alleged that, upon urging from Cohen, claimant Paul Fondacaro opened a cash account with Beacon on or about March 2, 1995. Claimants alleged that, from the time the account was opened through October 1995, respondent Cohen mishandled Mr. Fondacaro's account by making unauthorized transactions, misrepresenting and omitting material information concerning the financial condition of the issuing companies, guaranteeing profit, refusing to execute sales as ordered and representing that he was in possession of material non-public information regarding the stocks he recommended.

Claimants alleged that, based upon Cohen's recommendations, Mr. Fondacaro purchased 30,000 shares of PC Etcetera, Inc. ("PC") at 35 cents per share, for a total investment of \$10,512. Claimants further alleged that, on Cohen's recommendation, Mr. Fondacaro purchased 29,050 more shares of PC at a total cost of \$11,006.50. Claimants stated that Cohen continued to recommend purchases of additional shares of PC claiming that the price of PC would rise sharply in the short term. Claimants alleged that Mr. Fondacaro forwarded checks in the amount of \$15,000 and \$992.50 to pay for an additional 51,500 shares of PC stock which Cohen purchased for him between March 9 and March 13, 1995.

Claimants further alleged that on March 21, 1995, Cohen purchased 11,000 shares of Bancroft Holdings Corp. ("Bancroft") for a total of \$25,972. Claimants alleged that Mr. Fondacaro did not authorize this transaction and that there was no money in his trading account to cover the price of the stock. Claimants alleged that Cohen was never granted discretionary trading authority over the account. Claimants alleged that, when questioned about the trade, Cohen advised Mr. Fondacaro that Beacon was the only market maker for Bancroft and that the price of Bancroft would double in the short term. Claimants alleged that, as a result of Cohen's fraudulent misrepresentation, Mr. Fondacaro forwarded a check for \$26,262 to Beacon to pay for the trade. Claimants also alleged that Mr. Fondacaro advised Cohen that he was never again to purchase stock without prior authorization.

Claimants alleged that Cohen subsequently purchased an additional 5,000 shares of Bancroft for a total cost of \$11,812 without authorization. Claimants asserted that Cohen fraudulently induced Mr. Fondacaro to ratify this transaction and Mr. Fondacaro subsequently forwarded an additional \$12,000 to Beacon to pay for this trade.

Claimants alleged that respondents Beacon and Cohen failed to provide any marketing and price information to Mr. Fondacaro regarding Bancroft and failed to provide information regarding the aggregate amount of compensation Beacon and Cohen received in connection with the Bancroft transactions. Additionally, claimants asserted that Cohen did not disclose the financial problems at Bancroft and failed to disclose the past negative earnings of Bancroft. Claimants also alleged that Cohen failed to disclose the speculative nature and illiquidity of Bancroft stock.

Claimants alleged that throughout late March 1995, Cohen advised Mr. Fondacaro that he should postpone purchasing additional shares of PC and purchase Bancroft instead. Claimants alleged that Cohen sold shares of Mr. Fondacaro's holdings in PC to fund the purchases of Bancroft. Claimants alleged that Mr. Fondacaro approved some of the sales of PC but that, on occasion, Cohen sold PC stock without authorization. Claimants contended that for these transactions, as with the earlier purchases of Bancroft, respondents Beacon and Cohen failed to provide Mr. Fondacaro with any oral or written disclosures required by the Penny Stock Rules.

Claimants alleged that, when Mr. Fondacaro instructed Cohen to sell some of his shares of PC and wire him the proceeds, Cohen instead used the proceeds of the sale of PC to purchase additional shares of Bancroft. Claimants contended that Cohen refused to sell Mr. Fondacaro's Bancroft stock to generate the cash that Mr. Fondacaro had advised Cohen he needed. Claimants alleged that Cohen advised Mr. Fondacaro not to sell Bancroft because the price would rise substantially in the short term.

Claimants alleged that on April 28, 1995, based on Cohen's recommendation, Mr. Fondacaro purchased shares of Starlog Franchise Corp. ("Starlog"). Claimants asserted that Cohen again represented that Starlog's price would rise shortly but also claimed that Cohen failed to provide Mr. Fondacaro with any of the oral or written disclosures with regard to Starlog as required by the Penny Stock Rules. Claimants stated that the stock price of Bancroft was, at the same time, starting to decline. Claimants alleged that, notwithstanding, the decline in price, Cohen advised Mr. Fondacaro not to sell because the shares of Bancroft would continue to rise. Claimants asserted that, in May 1995, Mr. Fondacaro purchased, on Cohen's recommendation, shares of Advent Technologies, Inc. ("Advent"). Claimants alleged that Mr. Fondacaro sent a check for \$13,200 to Cohen to cover the purchase of Advent and claimed that, when the price of Advent dropped, Mr. Fondacaro followed Cohen's recommendation to sell Advent at a loss. Claimants also maintained that, in late May 1995, Cohen advised Mr. Fondacaro to purchase a block of Bancroft stock because it would instantly double in price. Claimants alleged that Mr. Fondacaro was induced into purchasing additional shares of Bancroft based on Cohen's misrepresentation of Bancroft's value.

Claimants asserted that on or before June 15, 1995, Cohen persuaded Mr. Fondacaro to open a joint account at Beacon with claimant Anne Fondacaro. Claimants also alleged that Cohen sold penny stocks to the Fondacaros for their joint account without qualifying them for penny stock transactions and without advising them of any market and pricing information. Claimants contended that Cohen continued to induce them to purchase shares of Starlog and Bancroft by fraudulently representing that the price of these stocks would rise in the short term.

Claimants alleged that Cohen never advised them when Beacon went out of business and claimed that they learned of this event when they contacted Beacon's clearing firm in late October 1995 after being unable to contact Cohen or anyone at Beacon. Claimants alleged that from March through October 1995, Mr. Fondacaro invested a total of \$105,066 in his individual account. Claimants also asserted that from June 1995 through October 1995, they invested \$50,024 in their joint account. Claimants maintained that, at the time Beacon closed, Mr. Fondacaro's individual account held 73,700 shares of Bancroft, 10 shares of PC and 500 shares of Starlog. Claimants stated that the joint account held 10,150 shares of Bancroft. Claimants maintained that all of these positions were virtually worthless since Beacon had gone out of business. Claimants alleged that they lost a total of \$155,111.3090.

Claimants alleged that respondent Donohue, as Cohen's supervisor, knew of, directed, encouraged and facilitated Cohen's conduct. Claimants alleged that they had been damaged by Cohen's fraudulent misrepresentations and omissions and that they had been placed in investments by Cohen which were totally unsuitable for them. Claimants also asserted that respondents knowingly failed to qualify them for penny stock transactions, breached their fiduciary duty and negligently failed to discharge the duty of care owed to them.

Respondent Donohue denied the allegations made by claimants and specifically denied that he had ever managed or supervised Cohen.

RELIEF REQUESTED

Claimants requested compensatory damages in an amount to be proven at the hearing, but at least in the amount of \$155,111.37, plus accrued interest; punitive damages on all claims; attorneys' fees and costs and such other and further relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, claimant's counsel presented documentation indicating that Respondent Donahue had filed for bankruptcy. The panel determined that Donahue could not be a party to this matter.

Respondents Beacon and Cohen did not appear at the hearing.

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 remains on file with the NASD.

AWARD

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

1. Respondents Beacon and Cohen be and hereby are jointly and severally liable to claimants in the amount of \$155,131.87 in compensatory damages;
2. Respondents Beacon and Cohen be and hereby are jointly and severally liable to claimants in the amount of \$9,965 for attorneys' fees;
3. Respondents Beacon and Cohen be and hereby are jointly and severally liable to claimants in the amount of \$50,000 as punitive damages;
4. Claimants' causes of action are sustained in their entirety.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 filing fee previously deposited by claimants and assess the following forum fees:

3 hearing sessions x \$750.00 =	\$2250
minus hearing session deposit -	<u>\$750</u>
TOTAL OUTSTANDING	\$1500

Respondents Beacon and Cohen be and hereby are jointly and severally liable for the sum of \$1500 representing 100 percent of the forum fees assessed. Respondents Beacon and Cohen owe the claimants \$750.00 and owe NASD Regulation, Inc. \$750.

Fees are payable to the NASD Regulation, Inc.

Concurring Arbitrators' Signatures

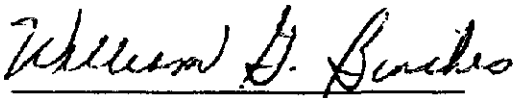


William G. Binckes, Esq.

Joseph H. Levie, Esq.

Theresa Y. Hu

I, William G. Binckes, Esq., do hereby certify that this is my decision in the above-captioned matter.



William G. Binckes, Esq.

NASD Date of Decision: February 11, 1997

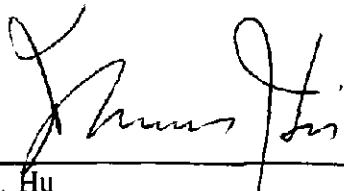
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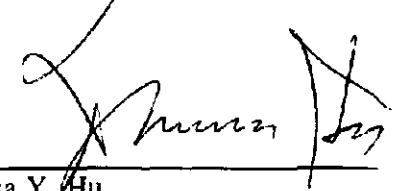
William G. Binckes, Esq.

Joseph H. Levie, Esq.



Theresa Y. Hu

I, Theresa Y. Hu, do hereby certify that this is my decision in the above-captioned matter.



Theresa Y. Hu

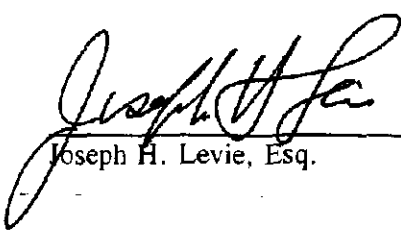
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William G. Binckes, Esq.



Joseph H. Levie, Esq.

Theresa Y. Hu

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Joseph H. Levie, Esq.

NASD Date of Decision: February 11, 1997