

## **AWARD**

### **NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of Arbitration Between

Allen Sternberg

Claimant,

and

No. 96-01296

The Harriman Group, Inc.,  
and Scott Follett

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant, Allen Sternberg, was represented by David A. Tucker, Esquire and Thomas N. Eckerle, Esquire of Johnson Smith Pence Densborn Wright & Heath located in Indianapolis, IN.

Respondents, The Harriman Group, Inc. and Scott Follett, were initially represented by Robert J. Krakow, Esquire of Gersten, Savage, Kaplowitz & Curtin, LLP located in New York, New York. Attorney for Respondent The Harriman Group, Inc. withdrew just prior to the August 19, 1997 continued hearing date of these proceedings; therefore, no one was present on behalf of Respondent, the Harriman Group, Inc. on the last hearing date of August 19, 1997.

### **CASE INFORMATION**

Claimant, Allen Sternberg's Statement of Claim was filed on or about April 3, 1996.

Claimant, Allen Sternberg's Submission Agreement was signed on March 22, 1996.

Respondents, The Harriman Group, Inc. and Scott Follett's Statement of Answer was filed on or about May 20, 1996.

Respondent, The Harriman Group Inc.'s Submission Agreement was signed on May 22, 1996.

Respondent, Scott Follett's Submission Agreement was signed on April 25, 1996.

### **HEARING INFORMATION**

Pre-hearing conferences were held on:

- December 19, 1996 at 9:30 am for one (1) session.
- March 14, 1997 at 2:30 pm for one (1) session.
- April 4, 1997 at 1:00 pm for one (1) session.
- May 5, 1997 at 9:30 am for one (1) session.

The hearing was held on:      June 3, 1997 beginning at 9:30 am for two (2) sessions.  
   June 4, 1997 beginning at 9:10 am for two (2) sessions.  
   August 19, 1997 beginning at 9:30 am for three(3) sessions.

The hearing was held in Indianapolis, Indiana.

### CASE SUMMARY

Claimant, Allen Sternberg, ("Claimant"), brought this action after he claimed that Respondent, Scott Follett ("Follett"), a registered representative working at the time for Respondent, The Harriman Group, Inc. ("HGI," together with Follett: "Respondents"), induced him to open a brokerage account with HGI by transferring \$44,000.00 of his stock portfolio to HGI after a telephone call to Claimant on or about February 1, 1993. Once Claimant's account HGI account was open, Claimant alleged that despite not knowing the Claimant's personal financial situation, tax status or investment objectives, Follett induced the Claimant to make a series of inappropriate investments in connection to Aqua Buoy Corporation ("Aqua Buoy"), Teltronics, Inc. ("Teltronics," ) and California Quartz. Claimant first alleged that he suffered damages in excess of \$216,000.00 which he invested after Follett made misrepresentations regarding Aqua Buoy, value which allegedly was two-thirds of Claimant's investment with HGI and a significant portion of his net worth. Claimant stated that Follett said he and HGI were in possession of favorable information as to Aqua Buoy and other companies that was not generally available to the market such as the fact that HGI held large positions in Aqua Buoy and other stock and would not "allow" the stock prices to go down, and that a substantial profit on this and other investments was virtually "guaranteed."

Claimant then alleged that Follett induced him to purchase, sell and then repurchase Teltronic stock at virtually identical prices over a short period of time resulting, which constituted manipulative and fraudulent acts by Follett and HGI in a violation of Sections 10(b) and 15(c)(1) of the Securities Exchange Act and Section 2 of the NASD rules of fair practice. The alleged transactions in question were: the August 23, 1993 purchase of 20,000 shares of Teltronics at 1 3/8 per share for a total cost of \$27,515.00; the September 17, 1993 sale of the Teltronics stock at 1 13/32 per share for a price of \$14,047.50; and, the September 24, 1993 purchase of 25,000 shares of Teltronics at 1 13/32 per share for a total cost of \$35,171.25. In addition, Claimant alleged that Follett then purchased 11,000 shares of California Quartz, Inc., at 3 5/8 per share for a total cost of \$38,890.00 on behalf of Claimant and for Claimant's account without Claimant's authorization and in violation of the Brokerage Agreement. Claimant alleged that the combination of the Aqua Buoy, Teltronics and California Quartz, Inc., transactions caused him damages of at least \$314,000.00.

The Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Respondents stated Claimant's losses were the result of his own informed investment decisions as a businessman, and that claiming damages three years after the alleged wrongdoing was inappropriate. Respondents further stated that Follett asked and understood

Claimant's personal financial situation as being that of a successful owner of several businesses, with a net worth of over \$1,000,000.00. As to the Aqua Buoy transactions, Respondents alleged that not only did Follett attempt to apprise Claimant of the potential risks involved in the purchase of these stocks, but he also sent Claimant copies of news releases, articles and other relevant data regarding various stocks, in order to allow Claimant to make informed investment choices. Furthermore, Respondents asserted that Follett only sold 10,000 of Claimant's Teltronics stock, the profits of which were used to purchase the stocks of another company. And finally, Respondents alleged that the purchase of California Quartz, Inc., was authorized by the Claimant, and in accordance with his investment objectives.

Respondents asserted the affirmative defenses of failure to state a cause of action upon which relief may be granted, waiver and ratification, and the fact that HGI maintained adequate and reasonable supervision over Claimant's account.

#### **RELIEF REQUESTED**

Claimant, Allen Sternberg, requested an award for: \$318,000.00 in actual damages as well as his costs and attorneys' fees.

Respondents, The Harriman Group, Inc., and Scott Follett requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees in defending the action.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made by/on behalf of Claimant, Allen Sternberg, the undersigned arbitrators have determined that Respondents, The Harriman Group, Inc. and Scott Follett, have 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 Respondents, The Harriman Group, Inc. and Scott Follett, had received due notice of the hearing as required under § 10318 of the Code.

Attorney Robert J. Krakow withdrew his representation of The Harriman Group, Inc. just prior to the August 19, 1997 continued hearing date of these proceedings, therefore, no one was present on behalf of Respondent, the Harriman Group, Inc. on the last hearing date of August 19, 1997.

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 Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

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

1. Respondent, The Harriman Group, Inc. is liable to the Claimant, Allen Sternberg, for \$211,900.00 in compensatory damages plus \$76,400.00 in interest. Respondent, The Harriman Group, Inc. is liable to the Claimant, Allen Sternberg for \$75,000.00 in attorney's fees, pursuant to the I. C. 23-2-1, for a total of \$363,300.00 due to the Claimant.
2. Of the foregoing award for compensatory damages, interest and attorneys fees, Scott Follett is jointly and severally liable with The Harriman Group, Inc. to pay Claimant, Allen Sternberg, \$107,600.00 in compensatory damages, plus \$38,800.00 in interest and \$37,700.00 in attorney's fees.
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 \$1000.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were five (5) pre-hearing conferences and there were eight (8) hearing sessions x \$1000.00 = \$9500.00 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 \$250.00 and shall retain as forum fees the hearing session deposit of \$1000.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Allen Sternberg. Respondents, Harriman Group, Inc. and Scott Follett are jointly and severally liable for and shall reimburse Claimant, Allen Sternberg for the \$1000 hearing session deposit.

Respondents, The Harriman Group, Inc., and Scott Follett are jointly and severally liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution forum fees of \$9,500.00 (- \$9,500.00 total forum fees - \$1000.00 hearing session deposit by Claimant Allen Sternberg + \$1000.00 postponement fee.)

Pursuant to § 10333 of the Code, The Harriman Group is liable for and shall pay the NASD Regulation, Inc. the remaining \$480.00 of its \$500.00 member surcharge. (The Harriman Group previously deposited \$20.00 of its member surcharge with the NASD Regulation, Incorporated Office of Dispute Resolution.)

Respondent Scott Follett is liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution postponement fee in the amount of \$1000.00.

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

Concurring Arbitrators' Signatures:

/s/ Patrick D. Carroll

October 16, 1997

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Patrick D. Carroll, Esq.  
Chairperson  
Public Arbitrator

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Dated:

/s/ Karl Bradlyn

October 16, 1997

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Karl Bradlyn  
Panelist  
Industry Arbitrator

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Dated:

Dissenting Arbitrator's Signature:

/s/ Bruce M. Fingerhut

October 15, 1997

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Bruce M. Fingerhut  
Panelist  
Public Arbitrator

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Dated: