

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John P. Arciero

96-01343

Name of Respondents

Sterling Foster & Company, Inc.
Claudia Silver
Anthony Muratore
Bear Stearns Securities Corp.

REPRESENTATION

For Claimant: Stephen Murphy, Esq. of Pino & Dicks, Longwood, FL.

For Respondents: Leslie K. Case, Esq. of Gersten, Savage, Kaplowitz, Fredericks & Curtin, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed: March 27, 1996.

Claimant's Submission Agreement signed on: March 20, 1996.

Joint Statement of Answer filed by Respondents on: May 20, 1996.

Respondent, Sterling Foster & Company, Inc.'s ("Sterling Foster") Submission Agreement signed on May 16, 1996 by Adam R. Lieberman on behalf of Sterling Foster.

Respondent Claudia Silver's ("Silver") Submission Agreement signed on May 1, 1996.

Respondent Anthony Muratore's ("Muratore") Submission Agreement signed on May 17, 1996.

Respondent Bear Stearns Securities Corporation's ("Bear Stearns") Submission Agreement signed on May 17, 1996 by Mark E. Lehman on behalf of Bear Stearns.

HEARING INFORMATION

On February 3, 1997 a telephonic pre-hearing conference lasting one session was conducted with the arbitration panel.

On February 20 and 21, 1997 in Tampa, FL hearings lasting (5) five sessions were conducted.

CASE SUMMARY

Claimant alleged that Sterling Foster was conducting a systematic and deliberate scheme to defraud the securities markets and investors through the underwriting, issuance and sale of small high risk companies which it took public. Claimant specifically alleges the following: that in January of 1995 he opened a securities brokerage account with Sterling Foster; that Silver was the account executive in charge of Claimant's account; that Silver executed for Claimant a series of trades in newly issued low priced stocks, Advanced Voice Technology, Inc. and Lasergate Systems, Inc., both of which had been underwritten by Sterling Foster; that despite Silver's repeated reassurances that the investments she was recommending were low risk investments which met the Claimant's conservative investment objectives, the trades she executed were not successful; that in August through November 1995, Claimant complained about his account to Muratore, a customer service representative for Sterling Foster; that thereafter Muratore invested Claimant's funds in two different initial public offerings underwritten by Sterling Foster; and, that after the two transactions, Claimant regained exactly the amount of money he had lost and Sterling Foster asked him to close his account. In addition, Claimant alleged that Bear Stearns, as its clearing agent, knew that Sterling Foster was committing fraud and failed to notify the NASD, the SEC, or any state securities department and, that friends and family of Bear Stearns executives were directly involved and profited from Sterling Foster's initial public offerings.

All Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted that the purchases of Advanced Voice Technology, Inc. and Lasergate Systems, Inc. were suitable investments and were consistent with Claimant's investment objective of speculation. Respondents further asserted that each and every trade made in Claimant's account was made with Claimant's prior knowledge and with his consent; Claimant was an educated, entrepreneurial businessman with other actively trading brokerage accounts and as such was a sophisticated investor and the risks of his investments were appropriately disclosed to him. Respondents, as affirmative defenses, asserted that they acted in good faith, that Claimant was barred from asserting his claims by the equitable principles of estoppel, waiver, and ratification, and that Sterling Foster properly, responsibly, and adequately managed and supervised Claimant's account.

Respondent Bear Stearns contended that its role with respect to Claimant's account was to act merely as clearing agent for Sterling Foster on a fully disclosed basis and, therefore, it had no duty, legal or otherwise, to supervise the activity of the agents of an introducing brokerage firm, specifically Sterling Foster.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$55,000.00, pre-award and post-award interest, attorneys' fees, costs, punitive damages, and such other relief as the arbitrators deemed appropriate under the circumstances.

Respondent Bear Stearns requested that the Statement of Claim be dismissed against it and all Respondents requested that the claims against them be denied in their entirety, that the costs of this proceeding, including attorneys' fees be assessed against the Claimant, and that this panel grant such other and further relief that it deemed just and equitable.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

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) Respondents Sterling Foster & Co., Inc., Claudia Silver, and Anthony Muratore are found liable, jointly and severally, and shall pay to the Claimant the amount of \$55,000.00.
- 2) Respondents Sterling Foster & Co., Inc., Claudia Silver, and Anthony Muratore are also found liable, jointly and severally, and shall pay to the Claimant, pursuant to Sec. 517.211 F.S. his attorneys' fees and costs as determined by a court of competent jurisdiction.
- 3) Respondents Sterling Foster & Co., Inc., Claudia Silver, and Anthony Muratore are also found liable, jointly and severally, and shall reimburse the Claimant for the previously submitted \$200.00 non-refundable filing fee and \$750.00 hearing session deposit.
- 4) Respondent Bear Stearns Securities, Corp. is found not liable and, therefore, all claims against it are hereby dismissed.
- 5) Claimant's requests for pre-award and post-award interest and punitive damages are hereby denied.

- 6) Respondents' requests for costs and attorneys' fees are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,500.00 (one pre-hearing conference with the entire panel x \$750.00 plus five hearing sessions x \$750.00).

Respondents Sterling Foster, Silver and Muratore are hereby assessed \$4,500.00, jointly and severally, for which the NASD shall retain the \$750.00 previously deposited by the Claimant, leaving a balance due to the NASD of \$3,750.00.

Respondent Sterling Foster is still owing \$350.00 pursuant to Rule 10333 of the Code of Arbitration Procedure for the previously assessed member surcharge.

Respondent Bear Stearns is still owing \$350.00 pursuant to Rule 10333 of the Code of Arbitration Procedure for the previously assessed member surcharge.

The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
/s/	
_____ Andrew J. Bolnick	Public
/s/	
_____ Joseph E. Meyer	Industry
/s/	
_____ Vernon E. Allen	Public

March 13, 1997

Date of Decision: _____