

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Hyman A. Lezell

96-01393

Names of Respondents

Greenway Capital Corp.  
Anthony Laurella  
Joseph Principato

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**REPRESENTATION**

For Claimant Hyman A. Lezell ("Lezell"): William P. McGrath, Jr., Esq. of Porter, Wright, Morris & Arthur, Washington, D.C.

For Respondents Greenway Capital Corp. ("Greenway"), Joseph Principato ("Principato") and Anthony Laurella ("Laurella"): Ruthann G. Niosi, Esq., New York, New York.

**CASE INFORMATION**

Statement of Claim filed: March 28, 1996.

Claimant's Submission Agreement signed on: March 23, 1996.

Joint Statement of Answer filed by Respondents Greenway, Principato and Laurella on: July 8, 1996.

Respondent Greenway did not sign a Submission Agreement/Corporate Acknowledgment as required under Rules 10301 and 10314 of the Code of Arbitration Procedure ("Code").

Respondent Principato's Submission Agreement signed on: March 27, 1997.

Respondent Laurella did not sign a Submission Agreement as required under Rules 10301 and 10314 of the Code (see "Other Issues").

### HEARING INFORMATION

On March 27, 1997 and March 28, 1997, hearings lasting four sessions were conducted in Fort Lauderdale, Florida.

### CASE SUMMARY

Claimant alleged that during the period from approximately August 1993 until April 1994, Respondents engaged in unauthorized trading in Claimant's securities trading account at Greenway; that, specifically, Respondents engaged in nearly twenty transactions for which they never obtained the authorization of Claimant; that when Claimant contacted Respondents by telephone on two separate occasions in the fall of 1993 to complain about the unauthorized trades, Respondents admitted that the trades were unauthorized, apologized, asked Claimant not to request that the trades be reversed and assured him that no further unauthorized trades would occur; that after another series of unauthorized trades occurred in March 1994, Claimant's account included 88,000 shares of Imaging Management Association ("IMAI") for which Respondents had spent \$91,932.25 of Claimant's funds, none of which was authorized; and, that by the time that Claimant received his last statement from Respondents, those shares were worth only \$27,544.00. Claimant further alleged that in a letter dated April 6, 1994, Claimant wrote to Respondents to complain about the unauthorized trades; that Respondents Principato and Laurella, who were leaving Greenway to join another brokerage firm, contacted Claimant and pleaded with him to withdraw his complaint and sign a release; that in order to entice Claimant to sign the release, Principato and Laurella promised that they would sell Claimant 100,000 warrants worth \$0.10 for a new offering which they expected to reach at least \$1.00 per share; that based upon that promise, Claimant signed the release but never received the promised warrants; that as a result Claimant filed this claim alleging: (1) that Respondents are liable for breach of contract, federal securities law violations, Florida securities law violations, and common law fraud for their failure to deliver the promised warrants; (2) that the release between the parties should be rescinded and that Respondents are liable for breach of contract, federal securities law violations, Florida securities law violations, common law fraud and breach of fiduciary duty for their repeated unauthorized trading in Claimant's account; and, (3) that Greenway is liable for failing to properly supervise Principato and Laurella.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that the Claimant is a highly educated, wealthy accountant who maintained accounts with the Respondents through three brokerage firms including one after the alleged wrongdoing; that notwithstanding the allegations in this case, there was no evidence of any complaint made to Respondent Greenway concerning the trading in Claimant's account other than the complaint letter dated April 6, 1994 which was shortly after Claimant became aware that Respondent Principato was leaving Greenway; that Claimant acknowledged that he had never spoken to a compliance person, a manager or a supervisor concerning his account; that there was evidence

of a letter from the Claimant dated October 4, 1993 requesting an invoice for a purchase of the same stock Claimant now complains is unauthorized. Respondents further contended that Respondent Principato testified at the hearing that the Claimant indicated to him that the reason he was complaining was because he intended to transfer his account with Principato to another firm in order to receive some insurance money from Greenway with a claim for what he admitted were specious allegations; that Principato advised the Claimant that because of the false allegations, he would not accept Claimant's account transfer unless a release was signed; that the Claimant desired to transfer his account to follow the broker, and consequently signed a release against all Respondents, which was countersigned by the Respondents or their representatives. Respondents maintained that even if there had been a prior unauthorized transaction, which they deny, Claimant's conduct ratified and became an absolute defense to all allegations of any unauthorized trades; that the conscious decision of the Claimant to continue to hold the IMAI shares after he signed the release, and his subsequent purchase of additional shares of that same security is evidence that he ratified any purchases of that stock made by Respondents. Respondents further maintained that there was no evidence that warrants were a consideration for the release or that any evidence of a failure to supervise Principato and Laurella existed.

#### **RELIEF REQUESTED**

Claimant requested an award of compensatory damages in excess of \$100,000.00, or, in the alternative, an award in favor of Claimant and against all Respondents rescinding the settlement agreement and the release; punitive damages in the amount of \$300,000.00; attorneys' fees and costs and for such other relief as is just and proper.

Respondents requested that the claim be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

1. On March 27, 1997 at the commencement of the hearing Respondents' counsel advised the panel that Respondent Laurella had died in November, 1996. Consequently, Claimant agreed to dismiss all claims against Respondent Laurella, without prejudice.
3. 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 NASD Regulation, Inc.

**AWARD**

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

1. Respondents Greenway and Principato are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for punitive damages, attorneys' fees and costs are denied.
3. Claimant's request that the panel enter an award against Respondents rescinding the settlement agreement and release is denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code the panel has assessed Forum Fees in the amount of \$3,000.00 (four (4) hearing sessions X \$750.00).

1. Claimant is hereby assessed forum fees in the amount of \$1,500.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Claimant of \$750.00.
2. Respondents Greenway and Principato are hereby assessed forum fees, jointly and severally, in the amount of \$1,500.00 payable to NASD Regulation, Inc.
3. NASD Regulation, Inc. shall retain the \$200.00 claim filing fee paid by the Claimant.
4. Respondent Greenway shall pay to NASD Regulation, Inc. the \$350.00 member surcharge pursuant to Rule 10333 of the Code.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/

Robert J. Hyman, Esq.

Public/Chairperson

/s/

Perry Wurst

Public/Panelist

/s/

Richard D. Longacre

Industry/Panelist

Date of Decision: May 5, 1997