

N.A.S.D. REGULATION AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Peter S. Bruckel

96-01439

Name of Respondents

Sterling Foster Investment Bankers
Robert Pratt

REPRESENTATION

For Claimant Peter S. Bruckel ("claimant") appeared Frank H. Lloyd Jr., Esq. of The Williams Law Offices located in Pittsford, New York.

For Respondents Sterling Foster Investment Bankers and Robert Pratt ("respondents") appeared Joseph D' Elia, Esq., located in Huntington, New York.

CASE INFORMATION

The Statement of Claim was filed on September 15, 1995.
Claimant's Submission Agreement was signed on March 28, 1996.

A Joint Statement of Answer was filed by Respondents, Sterling Foster Investment Bankers and Robert Pratt, on August 1, 1996.

Respondent, Sterling Foster Investment Bankers's Submission Agreement was signed on July 8, 1996.
Respondent, Robert Pratt's Submission Agreement was signed on July 8, 1996.

HEARING INFORMATION

Hearing Date/Sessions: June 6, 1997 - Two Sessions

The hearings were conducted at the Raddisson Downtown in Buffalo, New York.

CASE SUMMARY

Claimant alleged that in January, 1995 Pratt, a securities broker and investment counselor employed by Sterling Foster, contacted claimant with news of a highly successful stock offering recently completed by Sterling Foster for a company named "Lasergate." Claimant further alleged that Pratt then questioned claimant about his investment experience, income and investment goals.

Claimant maintained that he explained to Pratt that he had no experience in investments and that while he had significant cash on hand available for investment purposes, he was not a wealthy individual, and sought secure, risk free investments that were liquid because he had a large liability to the IRS due and

payable in April, 1995.

Claimant alleged that Pratt suggested an investment in Upjohn Corporation stock and claimant purchased 2,000 shares of stock on January 13, 1995. Claimant then contended that shortly after his purchase of Upjohn stock, Pratt contacted him to say his investment had been quite profitable and Pratt further suggested that claimant authorize him to liquidate the Upjohn investment and roll that investment, together with the profit thereon, into Advanced Voice Technology ("AVT") stock. Claimant maintained that he questioned Pratt about the investment and was assured it was liquid and risk involved would be minimal.

Thereafter, claimant allegedly authorized the purchase of 12,000 shares of AVT stock. Claimant further maintained that later that same day, Pratt called claimant and told him that the price of AVT stock had risen. Claimant alleged that he indicated to Pratt that he wished to sell the shares he had purchased and realize the profit from the transaction, but Pratt persuaded claimant to invest additional monies into the stock.

Claimant maintained that after he received a prospectus detailing AVT stock he decided that the company was not a sound investment and issued specific instructions to Pratt to sell the stock. When Respondent Pratt failed to sell the AVT position, claimant had his account transferred to another broker, who began selling the AVT stock gradually.

Respondents maintained that claimant told Pratt that he was interested in speculative investments and that he had substantial cash on hand to invest. Respondent further maintained that he had numerous discussions with claimant and he never once instructed Pratt to sell his shares of AVT. Respondent contended that claimant sought to make a "quick killing" in order to satisfy his IRS obligation, and that when he was unable to do so, claimant transferred his account and is now seeking to recover his losses.

RELIEF REQUESTED

Claimant requested the following relief:

1. Against respondents for \$106,250.00 as lost profit on claimant's initial purchase of 12,500 shares;
2. Against respondents for \$48,000.00 as lost profit on claimant's second purchase of 32,000 shares;
3. Against respondents for \$174,000.00 in lost principal on claimant's purchases of AVT stock;
4. Against respondents for one third of said amount as attorneys fees;
5. Exemplary or punitive damages in the sum of \$250,000.00; and
6. Interest, costs and the disbursements in this action, together with such other and further relief deemed just and proper.

Respondents requested that the statement of claim be dismissed in its entirety and that they be awarded the costs of defending this arbitration.

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 original remains on file with the NASD Regulation.

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. Sterling Foster Investment Bankers and Robert Pratt be and hereby are jointly and severally liable to pay the claimant the sum of \$15,000.00 plus interest of 9% from May 1, 1995 until the date of payment.
2. All other requests are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 filing fee and have assessed the following forum fees:

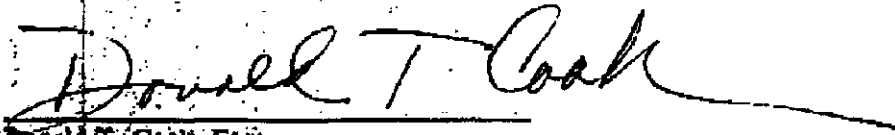
$$2 \text{ sessions} \quad \times \quad \$1000.00 \quad = \quad \$2,000.00$$

1. Claimant be and hereby is liable for the sum of \$1000.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc. Therefore, Claimant owes no fees to NASD Regulation, Inc.
2. Respondents be and hereby are jointly and severally liable and shall pay the sum of \$1,000.00, representing one-half of the total amount of forum fees assessed.

Fees are payable to the NASD Regulation

ARBITRATOR'S SIGNATURE

I, Donald T. Cook, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.



Donald T. Cook, Esq.
Public Chairperson

I, James G. Parker, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.

James G. Parker
Public Arbitrator

I, Francis G. Leonard, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.

Francis G. Leonard
Industry Arbitrator

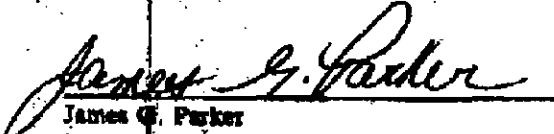
Date of Decision: July 25, 1997

ARBITRATOR'S SIGNATURE

I, Donald T. Cook, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.

Donald T. Cook, Esq.
Public Chairperson

I, James G. Parker, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.


James G. Parker
Public Arbitrator

I, Francis G. Leonard, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.

Francis G. Leonard
Industry Arbitrator

Date of Decision: July 25, 1997

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Donald T. Cook, Esq.
Public Chairperson

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Francis G. Leonard
Industry Arbitrator

Date of Decision: July 25, 1997