

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Edward J. Crenshaw

96-01443

Name of Respondents

Commonwealth Associates  
Richard Galterio

REPRESENTATION

For Claimant, Crenshaw, appeared Gerald B. Kline, Esq, a sole practitioner located Atlanta, GA.

For Respondents Commonwealth Associates ("Commonwealth") and Richard Galterio ("Galterio") appeared J. P. Wilson, Esq. in house counsel for Commonwealth Associates located in New York, N.Y.

CASE INFORMATION

The Statement of Claim was filed on March 25, 1996. Claimant's Submission Agreement was signed on March 25, 1996.

A Joint Statement of Answer was filed by Respondents on June 5, 1996. Respondent Commonwealth's Submission Agreement was signed on June 5, 1996. Respondent Galterio's Submission Agreement was signed on November 14, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	January 7, 1997	- 1 Session
Hearing Dates/Sessions:	February 6, 1997	- 2 Sessions
	February 7, 1997	- 2 Sessions
	February 8, 1997	- 1 Session

Hearing Location: NASD Regulation, Inc. District offices in Atlanta, GA.

CASE SUMMARY

Claimant stated that he had a brokerage account with Commonwealth since November 25, 1991 which was serviced by an number of employees including Galterio. According to claimant, Galterio assumed responsibility for claimant's account and vowed to improve the account's results.

Claimant contended that Galterio was a branch manager and that, on January 23, 1996 claimant sent him

a letter requesting an explanation as to why Galterio defied his instructions. Specifically, claimant alleged that he requested funds be withdrawn from his account to cover certain expenses and that Galterio sell 3,000 shares of Mesa Airlines for a profit; the funds were remitted only after repeated contact with the clearing agent and the sale of Mesa did not occur. Claimant argued that the Mesa shares were sold only after he threatened to close his account and they were sold for \$.50 per share less than he could have received had his instructions been followed. Claimant further argued that he had purchased Concord Camera, on Galterio's recommendation, and instructed Galterio to sell the stock at \$5.125. According to claimant, Galterio did not sell the stock and instead placed a stop order on the stock since he felt the price would rise. Claimant alleged that due to Galterio's failure to sell he has lost approximately \$6,500.00.

Claimant alleged that Galterio recommended the purchase of Health Management and recommended claimant margin the purchase since the price was expected to rise in the short term. Claimant also alleged that Galterio, claiming to have had discussions with Health Management officials, never disclosed that Health Management expected a loss for the quarter. Claimant stated his loss on Health Management is about \$26,000.00.

Claimant stated that Commonwealth is a market maker for the securities that were recommended to him which he purchased based on recommendations made.

Claimant contended that on February 21, 1997 he contacted Irv Trager in order to place a sale order for CMC Industries. According to claimant, he had been dealing with Trager since Galterio did not respond to his January 23, 1997 letter. Trager allegedly told claimant that he could not place the order but transferred him to Operations where Mr. Campanello, Director of Operations, supposedly stated he would handle the sale. When claimant did not receive a confirmation call concerning the sale he stated he called Campanello but was not able to speak to him. Claimant further argued that a few days later he received written confirmation in the mail and that the confirmation indicated that the commission charged was 4.5+ %, a rate he had never before been charged. Claimant contended he attempted to find out why the commission rate was so high but did not get a response.

Respondents denied the allegations of wrongdoing contained in the Statement of Claim and stated that all transactions in claimant's account were conducted in conformity with all laws, regulations, rules, practices and agreements.

Respondents argued that all employees were properly supervised and that they had established procedures in place which would reasonably be expected to prevent and detect violations of law.

Respondents further argued that claimant was a sophisticated investor who had effected other high risk transactions at both Commonwealth and other brokerage houses. According to respondents, claimant opened his account at Commonwealth in 1991 and it was not until mid-1994 that he started to complain about the service. Specifically, claimant alleged that Galterio failed to execute sell orders on Mesa and Concord but respondents contended that Galterio could not effect those transactions since the market never met the sell prices which claimant indicated.

Further Galterio contended that he did attempt to reach claimant regarding the public disclosures concerning Health Management but could not reach him. Galterio stated he did not make any additional attempts to contact claimant since he understood claimant had already informed Trager that he did not wish to do business with Galterio and was transferring his account from Commonwealth and therefore, Galterio argued, he was no longer under any obligation to claimant.

With respect to the allegations concerning margin and commission, respondents argued that claimant had authorized the purchase on margin and that just because claimant had never before paid 4.5+ % commission does not mean the commission rate violated any regulation. Further respondents contended that all confirmations indicated whether they made a market in a security as they did for Mesa, Concord and CMC.

Respondents maintained, as affirmative defenses, that claimant failed to state a cause of action, that he was fully advised of the high risk nature of the investments and that he assumed those risks. They further maintained that the losses were caused by market conditions outside their control, that claimant failed to mitigate his damages and that claimant ratified all transactions. Additionally, respondents maintained they acted in good faith, the securities were suitable for claimant, there was no fiduciary duty owed claimant and that claimant may not receive exemplary damages or attorney's fees as they are not supported by the facts or the law and that claimant has waived his right to obtain such relief.

### **RELIEF REQUESTED**

Claimant requested the amount of \$49,437 as follows:

1.	loss due to failure to execute Mesa Airline trade	\$ 1,500
2.	loss due to failure to execute Concord Camera trade	\$ 6,500
3.	excessive commission on CMC Industries trade	\$ 437
4.	lack of prudent action and misleading representations regarding the recommendation and purchase of Health management	\$26,000
5.	margin interest on health management	\$ 1,500
6.	preparation costs and filing fees	\$ 1,500
	Subtotal	\$37,437
7.	punitive damages - 25 %	\$ 9,360
	Total	\$46,797

plus costs.

Respondents requested:

1. dismissal of the Statement of Claim;
2. award of costs and expenses, including attorney's fees; and
3. any other such relief as may seem just and proper

### **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. Claimant's relief requests be and hereby are denied in their entirety.

2. Respondent Commonwealth Associates be and hereby is liable and shall pay to claimant \$6,000.00 which represents attorney's fees pursuant to O.C.G.A. 13-6-11.
3. Claimant's request for punitive damages is hereby denied.
4. Respondents' request for attorney's fees is hereby denied.
5. All other relief requests be and hereby are denied.

**FORUM FEES**

The Arbitrators have determined that NASD Regulation, Inc. shall retain the \$400.00 non-refundable filing fee and has assessed the following forum fees pursuant to Rule 10332(c) of the Code of Arbitration Procedure:

$$5 \text{ sessions} \times \$400 = \$2,000.00$$

The Arbitrators have determined that claimant shall bear one-half the cost of arbitration and respondents Commonwealth Associates and Richard Galterio shall, jointly and severally, bear one-half the cost of arbitration. Therefore, Claimant be and hereby is liable and shall pay NASD Regulation the sum of \$1,000.00 less the hearing session deposit previously remitted, net \$600.00 due. Respondents Commonwealth Associates and Richard Galterio be and hereby are jointly and severally liable to and shall pay NASD Regulation the sum of \$1,000.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

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Robert N. Leitch, Esq.  
Public Chairman

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Richard C. Murphy, Esq.  
Industry Panelist

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George W. Morris  
Public Panelist

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Robert N. Leitch, Esq.  
Public Chairman

Date of Decision 5/8/97

Richard C. Murphy, Esq.  
Industry Panelist

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