

N.A.S.D. REGULATION, INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Stephen Neil Estrin

96-01496

Name of Respondent

Peter Sullivan

REPRESENTATION

Claimant Stephen Neil Estrin ("claimant") appeared pro se.

For Respondent Peter Sullivan ("respondent") appeared Patrick J. Howley, Esq., Associate General Counsel for Tucker Anthony, Incorporated.

CASE INFORMATION

Statement of Claim was filed on: April 4, 1996.

Claimant's Submission Agreement was signed on: April 5, 1996.

Statement of Answer was filed on: June 17, 1996.

Respondent's Submission Agreement was signed on: July 9, 1996.

HEARING INFORMATION

Hearing Date/Sessions: December 18, 1996 - 1 session

The hearing was conducted at the offices of the National Association of Securities Dealers Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimant contended that Tucker Anthony was the brokerage house which brought Party City Corp. ("PCTY") public and that it was suggested to him that he contact respondent, a broker at Gabrielle Hueglin, & Cashman (a division of Tucker Anthony), regarding purchasing PCTY stock at the Initial Public Offering ("IPO"). Claimant alleged that towards the end of February,

1996, he contacted respondent to inquire about the stock and was informed that he would be able to purchase the stock for \$9.00 to \$10.00 per share. Claimant further alleged that, on March 23, 1996, he sent respondent \$3,000.00 with a letter instructing him to purchase 300 shares of the stock. Claimant asserted that, on March 29, 1996, two days after PCTY went public, he contacted respondent about his stock confirmation and was informed that the stock was never purchased in accordance with claimant's instructions not to purchase the stock if it opened past \$11.50. However, claimant maintained that he never gave respondent those instructions. In addition, claimant contended that he should have been notified when the stock was not purchased.

Respondent maintained that he was an employee of Tucker Anthony and worked out of the Gabrielle Hueglin, & Cashman office and that in 1996 he was instrumental in introducing PCTY to Tucker Anthony to arrange for an IPO. According to respondent, as the offering date approached respondent compiled a list of "friends and family" based upon information supplied to him from PCTY. Respondent contended that the individuals on this list were to be given consideration when, and if, PCTY allocated stock at the offering. Respondent maintained, however, that inclusion on this list did not guarantee that anyone would in fact be allocated stock. Respondent further maintained that, at the time claimant was placed on the list, he informed claimant that the stock was expected to be priced in the \$9.00 to \$10.00 range.

Respondent maintained that when claimant opened his account, he informed claimant that, although his name was on the list, no shares had been allocated to him and that if he wanted to purchase the stock he would have to do so in the secondary market. Respondent also maintained that he informed claimant that he expected the stock to open in the \$10.00 to \$11.00 range in the secondary market. Respondent alleged that claimant stated that under no circumstances did he want to pay more than \$11.50 per share. Respondent maintained that, since the stock opened above \$11.50, in accordance with claimant's explicit instructions he did not execute claimant's order. Respondent maintained that it was not until March 29, 1996, after claimant was informed that the stock was not purchased, that claimant denied ever setting any limitations on the price he was willing to pay for PCTY. Further, respondent contended that after the branch manager explained the reason for price limitations, claimant recanted his complaint and appeared satisfied with the explanation.

As affirmative defenses respondent maintained that the Statement of Claim failed to state a cause of action for which relief can be granted; that claimant was aware of the risks associated with his investment and claimant voluntarily chose to assume those risks; that respondent acted in good faith, and that respondent did not act with the intent to deceive or act recklessly with respect to claimant, nor was there any conspiracy, scheme, or intent to defraud claimant; that respondent did not conspire with or aide and abet any other person to make any untrue statement of material fact, employ any device, scheme or artifice to defraud or engage in any deception, manipulation, act, practice or course of business which operated as a fraud in connection with the transactions alleged in the Statement of Claim; that claimant did not rely upon any statements or admissions attributable to respondent; that respondent is not liable to claimant because he had no duty, contractual or otherwise, to disclose or inform claimant of any facts other than those which were disclosed and, respondent did not breach any duty owed to claimant, if such a duty existed; that the actions of respondent were not the proximate cause of claimant's alleged

damages; that claimant's claims are barred by claimant's own contributory negligence in connection with its investments; and that assuming, without conceding, that claimant may be entitled to damages arising out of the allegations in the Statement of Claim, such damages must be reduced by the proportion by which claimant's own negligence and culpable conduct caused its damages.

RELIEF REQUESTED

Claimant requested between \$1,700.00 and \$1,800.00 in actual damages.

Respondent requested that the statement of claim be dismissed in its entirety and that the claimant be required to pay all filing fees and forum fees.

OTHER ISSUES CONSIDERED & DECIDED

Claimant filed the claim pursuant to Rule 10302 (formerly known as Section 13) of the Code of Arbitration Procedure ("Code"). Pursuant to Rule 10302(f) of the Code, the presiding arbitrator directed that this case proceed with a hearing.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Sullivan be and hereby are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$25.00 non-refundable filing fee and the \$25.00 hearing session deposit submitted by claimant as full consideration for the hearing conducted in this matter

ARBITRATOR'S SIGNATURE

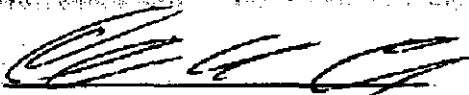


Charles A. Crocco, Esq.
Chairperson--Public Arbitrator

Date of Decision: Jan. 22, 1997

DATE OF DECISION: January 22, 1997

I, Charles A. Crocco, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Charles A. Crocco, Esq.