

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

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Jeff D. McGee

96-01943

Name of Respondents

Jack Basile  
Mark Mancino  
Mark Antonucci

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**REPRESENTATION**

Claimant Jeff D. McGee ("claimant") appeared Pro Se.

For Respondent Jack Basile ("Basile") appeared Michael Ference, Esq. of the law firm Lampert & Lampert located in New York, New York.

Respondent Mark Mancino ("Mancino") settled the matter with the claimant prior to the hearing on the merits.

Respondent Mark Antonucci ("Antonucci") filed a bankruptcy petition with the United States Bankruptcy Court for the Southern District of Florida on June 17, 1996, thereby automatically staying further proceedings against him.

**CASE INFORMATION**

Statement of Claim filed: May 6, 1996.

Claimant's Submission Agreement signed on: April 24, 1996.

Respondents Basile, Mancino and Antonucci did not file Statements of Answer.

Respondents Basile, Mancino and Antonucci did not file properly executed Submission Agreements.

**HEARING INFORMATION**

Hearing Dates/Sessions:

February 10, 1997

one session

The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located at 3490 Piedmont Rd. in Atlanta, Georgia.

### **CASE SUMMARY**

Claimant alleged that in July of 1994, he held 2000 units which consisted of one share and one warrant of American Toys Stock ("ATOYU"). Claimant further alleged that on July 6, Basile solicited the sale of ATOYU and the purchase of Eaglevision ("EAGV") to which he initially agreed. Claimant also alleged that he learned that the price Basile had quoted on EAGV was too high so he called and canceled the trades. Claimant contended that on July he received invoices for the sale of 2000 ATOYU and the purchase of 5000 EAGV. Claimant further contended that EAGV was purchased on June 23, which was prior to his conversation with Basile, and that it was for an amount greater than Basile had quoted. Claimant also contended that a confirmation slip canceling 2000 shares of the EAGV purchase was also included as one of the invoices.

Claimant asserted that he made several attempts to contact Basile but that they were unsuccessful. Claimant further asserted that on August 5, 1994, Basile contacted him soliciting the purchase of 7000 shares of EAGV and stating that he would correct the invoice dated the 23 of June. Claimant also asserted that he contacted Antonucci, the office manager, on August 5, but that Antonucci never called him back. Claimant alleged that he finally contacted Antonucci and was able to get out of all of the shares except for EAGV.

Claimant alleged that Mancino took over the account on February 1, 1995 and was instructed to sell the 3000 shares of Eaglevision but that only 1000 shares were sold. Claimant further alleged that he contacted Mancino again instructing him to sell the remaining 2000 shares. Claimant also alleged that shortly thereafter Hanover Sterling went out of business and he was unable to sell the Eaglevision shares until R.J. Forbes sold them in December of 1995 netting \$65.00. Claimant contended that because the shares were not sold as instructed he lost \$6,960.00. Claimant further contended that he taped his instructions to Mancino to sell the shares at \$3 3/4 per share.

### **RELIEF REQUESTED**

Claimant requested \$9,960.00 in actual damages.

Respondent Basile requested that the claims be dismissed in their entirety.

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

The arbitration panel made the following rulings concerning respondent Basile who did not file a Statement of Answer nor a Submission Agreement, and who also failed to personally appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent Basile was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Basile pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found the respondent Basile was required to file with NASD Regulation, Inc. a Statement of Answer and a properly executed Submission Agreement pursuant to Section 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent Basile, pursuant to Section 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation, Inc. provided respondent Basile with "due notice" of the hearing conducted in this matter by regular mail. The panel therefore, determined to proceed with the hearing without respondent Basile, who appeared by counsel.

At the evidentiary hearing in this matter, respondent Basile's counsel requested that the hearing be adjourned because 1) Basile was ill and could not appear at the hearing telephonically, and/or 2) Basile was not formally served with the Statement of Claim and other documents in this matter. The request was denied.

#### 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. Respondent Jack Basile be and hereby is liable and shall pay to claimant Jeff McGee \$3,000.00 in actual damages.
2. Respondent Jack Basile be and hereby is liable and shall pay to claimant Jeff McGee \$540.00 in interest damages.
3. The parties shall bear their respective attorney's fees and costs.
4. All other relief requests are denied.

**FORUM FEES**

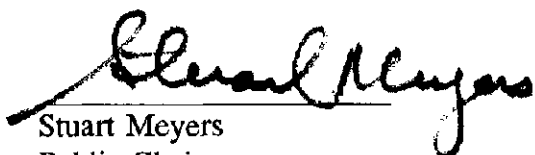
Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$75.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

|                                   |                   |
|-----------------------------------|-------------------|
| one session x \$200.00            | = \$200.00        |
| minus claimant's \$200.00 deposit | = <u>\$200.00</u> |
| total outstanding                 | = \$ 0.00         |

Respondent Jack Basile be and hereby is liable for the sum of \$200.00 representing the total amount of forum fees assessed. Therefore, respondent Basile shall pay to Jeff McGee \$200.00 as reimbursement of the hearing session deposit.

**ARBITRATOR'S SIGNATURE**

I, Stuart Meyers, do hereby swear or affirm, I am the individual described herein, and who executed this instrument which is my oath and award.

  
Stuart Meyers  
Public Chairperson

Date of Decision: April 25, 1997