

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

John F. Tessendorf,
Claimant.

and

Case Number: 96-02204

Landmark International Equities,
Yuri Aulov, and Eric Aronson,

Respondents.

REPRESENTATION OF PARTIES

Claimant John F. Tessendorf ("Claimant") was represented by Michael H. Schaalman, Esq. and Walter J. Skipper, Esq. of Quarles & Brady located in Milwaukee, Wisconsin.

Respondent Landmark International Equities ("Landmark") was unrepresented. Respondent Landmark was previously represented by Scott M. Zucker, Esq. of Great Neck, New York.

Respondent Yuri Aulov ("Aulov") was represented by Edward J. Toscano, Esq. of Huntington Station, New York.

Respondent Eric Aronson ("Aronson") was represented by Jay Marc Israel, Esq., David Hirschberg, Esq. and Andrew F. Greitz, Jr. of Wexler & Burkhart, P.C. located in Mitchel Field, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 23, 1996.

The Amended Statement of Claim was filed on or about June 6, 1996.

The Second Amended Statement of Claim was filed on or about January 6, 1997.

Claimant's Submission Agreement was signed on May 21, 1996.

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Respondent Landmark did not file a Statement of Answer or Submission Agreement.

Respondent Aulov's Amended Statement of Answer was filed on or about January 15, 1997.
Respondent Aulov did not file a Submission Agreement.

Respondent Aronson's Answer to the Second Amended Statement of Claim was filed on or about August 4, 1997.

Respondent Aronson did not file a Submission Agreement.

HEARING INFORMATION

The telephonic hearings before the full panel were held on June 4, 1997 for one (1) session; June 6, 1997 for one (1) session; October 21, 1997 for one (1) session; and April 20, 1998 for one (1) session.

The hearing on the merits was held on January 15, 1998 for three (3) sessions. The Hearing location was Milwaukee, Wisconsin.

CASE SUMMARY

Claimant sought to recover losses suffered on an investment in RF Management Corp. common stock. Claimant contended that Respondents made material misrepresentations and engaged in fraud in soliciting this unsuitable investment for Claimant. Claimant asserted that he was falsely told that he needed to purchase RF Management Corp. common stock in order to acquire 15,000 shares in an initial public offering by a company controlled by Oliver North that would be priced at \$5 a share and then rise to \$20 on close of trading on the first day and shortly thereafter rise to \$100. Claimant maintained that he also seeks to recover the promised amounts in a settlement.

Respondent Aulov denied all liability to Claimant in his Statement of Answer. Respondent Aulov alleged that Claimant was an educated investor with a net worth of \$3,000,000. Respondent Aulov contended that Claimant established growth and speculation as his investment objectives and indicated his willingness and capacity to afford this speculative investment strategy. Respondent Aulov asserted that all risks inherent in investing in the securities

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purchased were fully explained to the Claimant and he knowingly, willingly and voluntarily assumed the risks of investing in the markets. Respondent Aulov maintained that Claimant approved, authorized and ratified Respondents' actions and that Claimant is estopped from recovery.

Respondent Aronson generally denied all liability to Claimant in his Statement of Answer. Respondent Aronson alleged that Claimant failed to state a claim upon which relief may be granted. Respondent Aronson contended that because his relationship was that of an ordinary broker to a client, no fiduciary duty existed pursuant to New York law

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$98,687.50, interest in the amount of \$14,000, costs, attorney fees, and punitive damages in the amount of \$100,000.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice and that Respondents be awarded their costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

Claimant's Motion to Amend the Statement of Claim to Add Eric Aronson as a Respondent was granted.

Respondent Aronson did not appear at the hearing on the merits on January 15, 1998. The undersigned arbitrators determined that Respondent Aronson had received due notice of the January 15th hearing as required under §10315 of the NASD Code of Arbitration Procedure (the "Code") and that arbitration of the matter would proceed pursuant to §10318 of the Code. Shortly after the January 15th hearing, Respondent Aronson filed a Motion to Re-Open the Hearing pursuant to §10329 of the Code. Respondent Aronson's Motion to Re-Open the Hearing was granted by a unanimous decision of the panel. In accordance with Respondent Aronson's request the April 21, 1998 hearing was held by telephone. Respondent Aulov and Respondent Landmark International Equities failed to appear at the April 21st telephonic hearing. The undersigned arbitrators determined that Respondent Aulov had received due notice of the April 21st telephonic hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

As previously indicated, Respondent Landmark International Equities did not file a Statement of

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Answer. Upon review of the file, the undersigned arbitrators have determined that this Respondent has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the Code. Respondent Landmark International Equities did not appear at the hearing. Upon review of the file and representations of the Claimant, the undersigned arbitrators have determined that Respondent Landmark International Equities had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondents Landmark International Equities, Yuri Aulov, and Eric Aronson did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to §10301 of the Code and are bound by the determination of the arbitration panel on all issues submitted.

The parties who appeared at the hearing 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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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. That the Claimant, John F. Tessendorf, is awarded a total of \$101,842.00. Of this amount, the first \$81,842.00 is imposed against Respondents Landmark International Equities, Yuri Aulov and Eric Aronson, jointly and severally. The balance of the award, in the amount of \$20,000.00 is imposed against Respondents Landmark International Equities and Yuri Aulov only, jointly and severally;
2. That Respondents Landmark International Equities, Yuri Aulov and Eric Aronson are jointly and severally liable for and shall pay to Claimant John F. Tessendorf punitive damages in the amount of \$25,000.00;
3. The panel finds that an award of punitive damages is permitted under Wisconsin law;
4. As to Respondent Yuri Aulov: the panel finds that Respondent Aulov's conduct was an outrageous, wanton and willful disregard of the Claimant's rights and interests, in that

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this Respondent made misrepresentations to the Claimant in connection with the solicitation and sale of RF Management Corp. stock. Further, this Respondent made misrepresentations calculated to exacerbate the damages in connection with Claimant's continued holding of the security;

5. As to Respondent Eric Aronson: the panel finds that Respondent Aronson's conduct was an outrageous, wanton, and willful disregard of Claimant's rights and interests in that this Respondent, who was the broker of record with respect to the purchase and retention of the above security, participated in the post-purchase fraudulent misrepresentation to induce Claimant to retain ownership;
6. As to Respondent Landmark International Equities: the panel finds that this Respondent's conduct was an outrageous, wanton and willful disregard of Claimant's rights and interests in that this Respondent intentionally failed to supervise Respondent Aulov and Aronson. Respondent Landmark International Equities intentionally disregarded the supervisory responsibilities and duties it owed to its client, Claimant John Tessendorf;
7. That other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
8. That any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 per pre-hearing session, if any. There were seven (7) hearing sessions \times \$750 = \$5,250 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. by the Claimant. Pursuant to §10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the Postponement Deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10332(c) of the Code, Respondents Landmark International Equities, Yuri Aulov,

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and Eric Aronson are jointly and severally assessed and shall pay to NASD Regulation, Inc. Office of Dispute Resolution all forum fees incurred in this action which is the amount of \$5,250. Pursuant to §10319 of the Code, Respondent Aronson is assessed and shall pay to NASD Regulation, Inc. Office of Dispute Resolution Postponement Fees incurred in this action in the amount of \$750. Pursuant to §10333 of the Code, Respondent Landmark International Equities is assessed and shall pay the Member Surcharge in the amount of \$350.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

/s/ Michael B. Laikin, Esq.
Michael B. Laikin, Esq.
Chairperson
Public Arbitrator

April 23, 1998

Dated:

/s/ Stanley H. Michelstetter, II, Esq.
Stanley H. Michelstetter, II, Esq.
Panelist
Public Arbitrator

April 22, 1998

Dated:

/s/ Gerald A. Grossman, Esq.
Gerald A. Grossman, Esq.
Panelist
Industry Arbitrator

April 24, 1998

Dated:

For NASD Regulation use only:

Date award served on the parties: April 24, 1998