

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William and Margaret K. Aurilio

96-02763

Name of Respondents

Joseph Bonetti
Ron Bozan
John Margiotta

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 5, 1996, claimants William and Margaret K. Aurilio ("claimants") who appeared Pro Se through, William Aurilio ("claimant"), alleged that on Saturday April 14, 1996, he received a call from Joe Bonetti ("Bonetti"), a broker with Greenway Capital Corporation, who recommended that he purchase units of Dialysis Corp of America ("DIA") an Initial Public Offering. Claimant further alleged that Bonetti suggested that he purchase several thousand units but that he told him he wanted 500 units as that was all he could afford. Claimant also alleged that Bonetti repeatedly assured him that DIA was sure to rise in value and that there were no restrictions on resale. Claimant contended that he was sent a red herring and joint account papers which were signed and returned. Claimant also contended that Bonetti subsequently called him telling him that he had purchased 2,500 shares for his account in the after market for \$6 1/4 per share. Claimant asserted that he immediately confronted Bonetti telling him that he could not afford this trade after which Bonetti told him and purchased a total of 4,500 shares. Claimant further asserted that he received confirmations for 500 units at \$3 3/4, 3,000 common shares at \$6 1/4, and 2,000 common shares at \$6 1/4, for a total of \$31,290.00. Claimant also asserted that he remitted payment for the 500 units he had agreed to purchase. Claimant alleged that he attempted to sell the units but that Bonetti did not follow his instruction. Claimant further alleged that he spoke to Bonetti's assistant and was unsuccessful in getting the trade completed. Claimant also alleged that he later had a conversation with the office manager who canceled all the trades in the account. Claimant contended that since he had ordered the 500 units, that trade should not be canceled. Claimant further contended that as a result of the above, he has suffered a loss for which the respondents should be held liable.

Respondents Ron Bozan and John Margiotta through their representative and counsel, Ruthann Niosi, Esq., a sole practitioner located in New York, New York, maintained that claimant's conduct, at a minimum, ratified the trading which occurred in his accounts. Respondents further maintained that no timely objection was raised which bars the claimant from recovery. Respondents also maintained that the law clearly states that an investor is not permitted to play the market at the expense of the broker or broker dealer. Respondents contended that claimant authorized and directed the execution of all transactions in his accounts, including the sale he now seeks to have reinstated. Respondents further contended that they did not have a fiduciary duty to claimant because one is not owed in the ordinary course of a broker-client relationship. Respondents also contended that as a result of the above, they should not be held liable.

Respondent Joseph Bonetti through his representative and counsel, Michael Utilla, Esq., located in Brooklyn, New York, maintained that the Statement of Claim is insufficient as to any cause of action against him as is evident by claimant's own admissions. Respondent further maintained that respondent Margiotta resolved the complaint with claimant without Bonetti's consent or participation. Respondent also maintained that he did not have full, complete, ongoing and contemporaneous knowledge of all of the acts complained of by claimant as a substantial portion of the transactions complained of were handled by his supervisor Margiotta. Respondent contended that claimant ratified the transactions for not making a timely complaint. Respondent further contended that as a result of the above, he should not be held liable.

RELIEF REQUESTED

Claimants William and Margaret K. Aurilio requested \$2,750.00 in actual damages plus \$2,000.00 in punitive damages.

Respondents Ron Bozan, Joseph Bonetti and John Margiotta requested that the claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered and reviewed all documentation submitted by the parties concerning claimants' Motion to Preclude Respondents John Margiotta and Ron Bozan's Statement of Answer as it is untimely. The arbitrator denied the motion.

The arbitrator considered and reviewed all documentation submitted by the parties concerning claimants' Motion that the arbitrator take Judicial Notice of the following: 1) The fact that an investigation was or is being conducted by the National Association of Securities Dealers, Inc. with relation to Greenway Capital Corporation and its role in the IPO, Dialysis Corporation of America, Inc.; 2) Any findings of fact developed as a result of that investigation; 3) The results of any audit which was conducted in relation to the matter in question; 4) The complete record of the investigation including, but not limited to, any inquiries made and responses of Greenway Capital Corporation and any of its agents, servants, employees or legal counsel; 5) Whether or not the investigation is completed and, if complete; a statement of the findings of

the investigator or any review body, whether any action was taken or recommended and the final resolution thereof if applicable; and, 6) Such other and further observations as may be proper and consistent with the disposition and resolution of the controversy. The Arbitrator granted the Motion, however, claimants provided no such information for consideration.

The arbitrator considered and reviewed all documentation submitted by the parties concerning respondent Joseph Bonetti's request to file a late Statement of Answer. The arbitrator granted the request.

AWARD

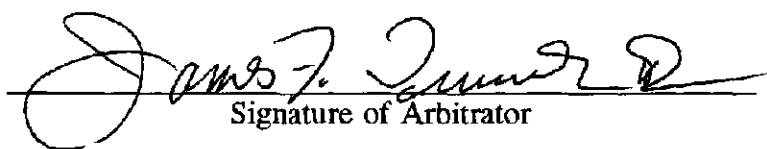
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James F. Turner, III, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants on August 5, 1996, and by respondents John Margiotta on November 14, 1996, Joseph Bonetti on November 15, 1996, and not by respondent Ron Bozan as is required by Sections 10301 and 10302 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the claimants William and Margaret K. Aurilio against respondents Joseph Bonetti, Ron Bozan and John Margiotta are denied in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, **James F. Turner, III**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: February 11, 1997