

## **AWARD**

### **NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

In the Matter of the Arbitration Between

#### **Names of Claimants**

Bill Mauro and Judith Ann Mauro JTWROS

96-02811

#### **Names of Respondents**

Nationwide Securities Corp.

Michael Pardini

David Lavender

Lou Rigatoni

Lou Pasciuto

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### **REPRESENTATION**

The Claimants Bill and Judith Ann Mauro ("the Mauros") appeared pro se.

For Respondent Nationwide Securities Corp. ("Nationwide"): Jonathan A. Pace, Esq. of Pace & Rickey, L.L.P., Dallas, Texas. (Mr. Pace withdrew from the representation of Nationwide on January 21, 1997-see "Other Issues").

Respondents Michael Pardini ("Pardini"), David Lavender ("Lavender"), Lou Rigatoni ("Rigatoni") and Lou Pasciuto ("Pasciuto") appeared pro se-(see "Other Issues").

### **CASE INFORMATION**

Statement of Claim filed: July 1, 1996.

Claimants' Submission Agreement signed on: June 24, 1996.

Statement of Answer filed by Respondent Nationwide on: August 30, 1996.

Respondent Nationwide's Submission Agreement/Corporate Acknowledgment signed on: September 10, 1996 by Kevin Williams on behalf of Nationwide.

Statement of Answer filed by Respondent Lavender on: September 6, 1996.

Respondent Lavender's Submission Agreement signed on: September 6, 1996.

Respondents Pardini, Rigatoni and Pasciuto did not file Statements of Answer or sign Submission Agreements, as required by Rules 10301 and 10314 of the Code of Arbitration Procedure ("Code"), (see "Other Issues").

### HEARING INFORMATION

A Pre-Hearing Telephonic Conference lasting one (1) session was conducted on December 9, 1996 with the arbitration panel.

A hearing lasting one (1) session was conducted in Fort Lauderdale, Florida on February 18, 1997.

### CASE SUMMARY

Claimants alleged that through deceptive and illegal practices by the Respondents they have incurred a substantial loss of capital due to the purchase of Thermo-Mizer Environmental stock and warrants ("Thermo-Mizer") by Respondents for their account at Nationwide. Claimants further stated that when the price of the stock declined and they decided to sell on March 14, 1996 (it was selling at approximately \$6.00 a share and the warrants at \$3.00), that Respondents at Nationwide blocked their attempts to do so and that all subsequent efforts to sell the stock in the following days and weeks were repeatedly met with persuasion by the Respondents not to sell. Claimants alleged that Respondent Lavender told them on March 14, 1996 that they would have to speak to Pardini to sell the stock and warrants but that Pardini was unavailable and, that Lavender went on to assure them that there was nothing to worry about. Claimants further stated that Pardini was the Senior Executive Sales Manager who solicited the initial stock offering; that when they asked Respondent Rigatoni to sell the stock that he told them that he was Pardini's assistant and that he could not trade; and, that Respondent Pasciuto was a partner in the firm.

In its Statement of Answer, Respondent Nationwide denied all allegations of wrongdoing contained in the Statement of Claim and admitted that Claimants purchased shares and warrants but maintained that it could neither admit or deny that a sell order was given to Respondent Pardini who was no longer with the firm. Respondent Nationwide further maintained that the Mauros ratified the transactions as a matter of law since they determined to hold on to the shares of stock at issue and that having made the decision to keep the shares, the Mauros can not now sue for lost profits or sale proceeds. Respondent Nationwide maintained that to allow the Claimants to recover the sale proceeds from an alleged sale in early March, 1996 at \$6.00 per share and still retain the shares of Thermo-Mizer would be to allow them double recovery and that Claimants have not incurred a loss to date.

Respondent Lavender stated in his Statement of Answer that he should not be a party to this action since his contact with the Claimants was limited to one occasion at which time he answered the telephone extension of a colleague in order to take a message; that the caller was Bill Mauro who asked Respondent Lavender if he knew of the reason for the recent decline in

Thermo-Mizer; that although he (Lavender) had noted that there had been an increase in selling volume at approximately the period during which the Claimant indicates that he spoke with him, he has no distinct recollection of stating such to the Claimant. Respondent Lavender further maintained that he did not establish, maintain or financially benefit from the Claimants' account nor did he have any fiduciary obligation to the Claimants and, therefore, would have no motivation or interest in convincing them to buy or sell any security and therefore, he did not do so.

### **RELIEF REQUESTED**

Claimants requested damages of \$15,000.00 plus interest at the statutory rate plus punitive damages.

Respondent Nationwide requested dismissal of the Claim in its entirety.

Respondent Lavender requested dismissal of all claims against him with prejudice.

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

Pursuant to Section 10101 of the Code, the arbitration panel found subject matter jurisdiction over this entire controversy.

Initially, Respondent Nationwide was represented by Jonathan A. Pace, Esq. On January 27, 1997 NASD Regulation, Inc. received a letter dated January 21, 1997 signed by Mr. Pace stating that by mutual agreement he had withdrawn as counsel to Nationwide in this proceeding.

With the exception of David Lavender, none of the Respondents appeared at the hearing on February 18, 1997. During the hearing the Claimants advised the arbitrators that they had dismissed all claims against Respondent Lavender and provided the panel with a Stipulation of Discontinuance and Release dated January 17, 1997, thereby releasing Lavender as a party to this matter. Therefore the hearing continued against the remaining Respondents, Nationwide, Pardini, Rigatoni and Pasciuto.

Respondents Pardini, Rigatoni and Pasciuto did not file Statements of Answer nor did they sign Submission Agreements as required under Rules 10301 and 10314 of the Code. The arbitration panel found that Respondent Nationwide was an NASD Regulation, Inc. member firm and that Pardini, Rigatoni and Pasciuto were persons associated with an NASD Regulation, Inc. member firm at the time the controversy arose. Consequently the arbitration panel found personal jurisdiction over Respondents Nationwide, Pardini, Rigatoni and Pasciuto. In view of the above the arbitration panel found that Respondents Pardini, Rigatoni and Pasciuto were required to file with NASD Regulation, Inc. Statements of Answer and properly executed Submission Agreements pursuant to Rule 10314(b) of the Code.

In addition, in accordance with Rules 10301, 10315 and 10318 of the Code, the arbitration panel determined that all Respondents were provided with "due notice" of the hearing conducted in this matter by regular and certified mail. The arbitrators, therefore, determined to proceed with the hearing without the Respondents whose attendance was unexcused.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Nationwide, Pardini, Rigatoni, and, Pasciuto are found liable, jointly and severally and shall pay to the Claimants the amount of 9,700.00 plus pre-judgment interest in the amount of \$776.00 for a total of \$10,476.00.
2. Further, Respondents Nationwide, Pardini, Rigatoni and Pasciuto are found liable, jointly and severally, and shall pay to the Claimants punitive damages in the amount of \$31,428.00 due to the panel's finding of fraud on the part of these Respondents.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$800.00 (one (1) hearing session X \$400.00 + one (1) pre-hearing session X \$400.00)

1. Respondents Nationwide, Pardini, Rigatoni and Pasciuto are hereby assessed, jointly and severally, forum fees in the amount of \$400.00 payable to NASD Regulation, Inc.
2. The Claimants are hereby assessed forum fees in the amount of \$400.00 for which NASD Regulation, Inc. shall retain the \$400.00 previously deposited by the Claimants in full satisfaction thereof.
3. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.
4. NASD Regulation, Inc. shall retain the non-refundable member surcharge of \$200.00 paid by Respondent Nationwide, pursuant to Rule 10333 of the Code.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/

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Randy L. Rubin, Esq.

Public/Chairman

/s/

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Michael R. Emery, Esq.

Public/Panelist

/s/

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William A. Collison, Jr.

Industry/Panelist

Date of Decision: March 31, 1997