

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Richard A. Moeller

96-02964

Name of Respondents

Richard C. Cioffi, Jr.  
State Street Capital Markets Corp  
Christopher A. Carra (Settled)  
Donald Sedy (Settled)

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on April 11, 1996, claimant Richard A. Moeller ("claimant") who appeared Pro Se, alleged that respondents Richard Cioffi, Jr. ("Cioffi"), Christopher A. Carra ("Carra"), Donald Sedy ("Sedy") and State Street Capital Markets Corp ("SSCM") mismanaged his account. Claimant further alleged that in January 1996, respondents called him to discuss the possible purchase of shares in an Initial Public Offering ("IPO") called Thermo-Mizer ("THMZ"). Claimant also alleged that he listened to their proposal and they said they would call him when the IPO came out. Claimant asserted that without his knowledge the IPO came out, and respondents informed him that he owned THMZ and that the settlement letter had been sent to him via FedEx. Claimant further asserted that he thought he could get into trouble for not paying for the purchase, and although it was unauthorized, he sent them a check.

Claimant also asserted that he spoke with his regular broker who informed him that he did not have to send the check if he did not authorize the purchase. Claimant contended that within 24 hours his regular broker advised him to sell THMZ, so he called respondents over the next three to four days to sell the stock, but they did not return his calls. Claimant further contended that on March 13, 1996, Sedy called him and said the stock was falling and that he should sell his 400 THMZ common stock and buy 1000 THMZ warrants. Claimant also contended that he told Sedy he would think about it and that he should call back the next day. Claimant alleged that he then received a confirmation stating that he had purchased 1000 shares of THMZ warrants at 3 1/2 without his authorization. Claimant further alleged that a Manager at SSCM promised to help him by selling 500 THMZ warrants at \$3 1/2. Claimant also alleged that he got a confirmation which reflected a further loss since the warrants had been sold for \$3 1/8. Claimant alleged that he then requested the sale of all THMZ at \$3 1/8, but was told by Sedy that there were no buyers.

Respondent Cioffi, who appeared Pro Se, maintained that he was an account opener for Sedy and Carra. Respondent Cioffi further maintained that he spoke with claimant and recommended to him an IPO called THMZ. Respondent Cioffi also maintained that he took an indication of interest from claimant in the form of the new account he opened with Sedy and Carra. Respondent Cioffi contended that he sent claimant a prospectus and spoke with him again to make sure he was still interested. Respondent Cioffi further contended that in the days following the IPO trading, claimant would call to speak with him, but that he could only tell him the Sedy and Carra would call him, since he was not an account executive.

Respondent State Street Capital Market Corp., through its representative and counsel, Mark J. Astarita, Esq., of the law firm Gusrae, Kaplan & Bruno, located in New York, was granted an extension to file a Statement of Answer by November 27, 1996. Respondent SSCM failed to file an Answer to the Statement of Claim.

Prior to the decision on the merits and by letter dated October 9, 1996, claimant Richard A. Moeller settled his claims against respondents Christopher A. Carra and Donald Sedy.

### **RELIEF REQUESTED**

Claimant Richard Moeller requested \$6,262.50 in actual damages.

Respondent Richard Cioffi requested that the claims against him be dismissed in their entirety.

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

In accordance with Section 10302 of the NASD Code of Arbitration Procedure, respondent State Street Capital Markets Corp., was served by regular mail and given an opportunity to respond, which it failed to do. In addition, service of the overdue answer notice and notification of arbitrator's identity was effected upon respondent, as evidenced by the signed signature card on file at the NASD Regulation, Inc.

Pursuant to the By-laws of the NASD Regulation, Inc., the arbitrator determined that respondent State Street Capital Markets Corp. had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore bound by the arbitrator's ruling and determination.

### **AWARD**

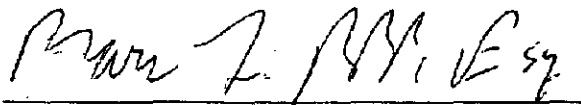
Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Marc Ripp, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Richard Moeller on July 8, 1996 and by respondent Richard Cioffi on December 9, 1996 and not by respondent State Street Capital Market Corp. as required by Section 10301 and 10302 of the Code of Arbitration Procedure.

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

1. The claims of claimant Richard Moeller against respondents Richard Cioffi and State Street Capital Markets Corp. are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant Richard A. Moeller shall be retained by the NASD Regulation, Inc.

**AFFIRMATION**

I, **Marc L. Ripp, Esq.**, 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.

  
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Marc L. Ripp, Esq.

Date of Decision: February 12, 1997