

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard A. Baumer, Sr. & Frances Baumer

96-03513

Name of Respondents

Hanover Sterling & Co., Ltd.
Peter Palmieri
Andrew Gonzales

REPRESENTATION

For Claimants: Stephen D. Spivey of the Law Offices of Stephen D. Spivey, Esq., Ocala, FL.

For Respondent Peter Palmieri: Robert K. Savage, Esq., Tampa, FL.

The Respondent Andrew Gonzales appeared pro se.

Respondent Hanover Sterling & Company, Ltd. did not appear (see "Other Issues").

CASE INFORMATION

Statement of Claim filed: August 14, 1996.

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

Statement of Answer filed by Respondent Peter Palmieri on: November 4, 1996.

Respondent Peter Palmieri's Submission Agreement signed on: October 31, 1996.

Statement of Answer filed by Respondent Andrew Gonzales on: November 14, 1996.

Respondent Andrew Gonzales did not execute a Submission Agreement as required by Rule 10314 of the Code of Arbitration Procedure (Code).

Respondent Hanover Sterling & Company, Ltd. did not appear (see "Other Issues").

HEARING INFORMATION

On March 20, 1997, hearings lasting two (2) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimants Richard A. Baumer, Sr. and Frances E. Baumer alleged that in September, 1993, they opened an account with the Respondents. Claimants further alleged that Respondents Peter Palmieri and Andrew Gonzales recommended Eagle Vision Stock, a wholly owned subsidiary of Enpro and based on the Respondents' recommendation, the Claimants purchased 1,000 shares of Eagle Vision Stock on March 21, 1994.

Claimants further alleged the following: that shortly after the Claimants purchased Eagle Vision Stock they received a prospectus on Envirometrics, Inc.; that the Respondents informed the Claimants that Eagle Vision was the holding company for Envirometrics; that based on the representations of the Respondents, Claimants continued to purchase shares of Eagle Vision in July, August, October and November, 1994, accumulating 4,800 shares; and that in fact, Eagle Vision and Enpro had no relation to Envirometrics.

Claimants further alleged that in February, 1995 the Securities and Exchange Commission froze the accounts of the Respondent Hanover Sterling & Company, Ltd. Claimants next alleged that they demanded the sale of their stock, but were convinced not to sell by the Respondents who assured them that they would be entitled to a "high premium" based upon the outstanding short positions in the stock. Claimants alleged that subsequently, Eagle Vision was merged into another company, and the shares became worthless.

Respondent Peter Palmieri generally denied the material allegations set forth in the Statement of Claim. Palmieri further alleged that he made no misrepresentations and that he observed the fair business practices and equitable principles of trade as embodied in the NASD Rules of Fair Practice and all other rules, regulations and statutes.

Respondent Peter Palmieri alleged the following affirmative defenses: Claimant was a knowledgeable investor who directed all activity in his account; any damages suffered were beyond Respondent Palmieri's control; failure to state a claim upon which relief can be granted; assumption of risk; claim of reliance is barred; laches; estoppel; and, ratification.

Respondent Andrew Gonzales alleged that he was not, and never was the "broker of record" for the Claimants. He further alleged that other than occasionally answering the telephone when the Claimants called, he had no interaction with the Claimants.

RELIEF REQUESTED

Claimants requested rescission of their Eagle Vision purchase, statutory damages as calculated under Florida Statute 517.211(3)(b), costs, attorneys' fees, compensatory damages in excess of their \$25,000.00 investment capital plus punitive damages.

Respondent Peter Palmieri requested dismissal of the claim.

Respondent Andrew Gonzales requested that he be dismissed from this matter and be reimbursed for the costs of his defense. Further, Gonzales requested that the Claimants write him a letter of apology.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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 originals remain on file with the NASD.

Prior to the commencement of the first hearing session the arbitration panel was informed that the Claimants were dismissing with prejudice all claims against Respondent Andrew Gonzales.

All matters concerning Hanover Sterling & Company, Ltd. are indefinitely stayed pursuant to an Order entered on May 8, 1996, by the United States Bankruptcy Court.

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) Respondent Peter Palmieri is found liable and shall pay to the Claimants compensatory damages in the amount of \$6,549.00.
- 2) Respondent Peter Palmieri shall pay to the Claimants pre-judgment interest in the amount of \$1,676.00.
- 3) Respondent Peter Palmieri shall pay to the Claimants costs of \$275.00.
- 4) Respondent Peter Palmieri is found liable and shall pay to the Claimants, pursuant to Florida Statutes Section 682.11, their attorney's fees as determined by a court of competent jurisdiction.
- 5) Claimants' request for punitive damages is denied.
- 6) Respondent Gonzales' requests for costs and a letter of apology are denied.

OOOOOOOOOP

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 (\$400.00 X 2 sessions).

- 1) Claimants are hereby assessed \$400.00 for which the NASD shall retain the \$400.00 previously deposited by them in full satisfaction thereof.
- 2) Respondent Palmieri is hereby assessed \$400.00.
- 3) The NASD shall retain the claim filing fee of \$100.00 paid by the Claimants.

Fees are payable to National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators' Signatures
Name

/s/

Sam A. Giunta
Chairperson

Public Arbitrator

/s/

J. David Stillman

Industry arbitrator

/s/

Nicholas John Taldone

Public Arbitrator

May 21, 1997
Date of Decision: _____