

## NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Vernon C. Nicolson

96-03590

Name of Respondents

Salvatore Valente  
L.T. Lawrence & Co, Inc.

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**REPRESENTATION**

Claimant Vernon C. Nicolson ("claimant") appeared pro se.

For respondent Salvatore Valente ("Valente") appeared Christine Cole, Esq., of the law offices Slater and Cole, LLP located in New York, New York.

For respondent L.T. Lawrence & Co., Inc ("LTL") appeared Ruthann Niosi, Esq., with law offices located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on: August 16, 1996.

Claimant's Submission Agreement was signed on: August 16, 1996.

Statement of Answer was filed by respondent Valente on: October 10, 1996.

Respondent Valente's Submission Agreement was signed on: October 10, 1996.

Statement of Answer was filed by respondent LTL on: October 16, 1996.

Respondent LTL did not file a properly executed Submission Agreement.

**HEARING INFORMATION**

Pre-Hearing Conferences:	March 10, 1997	-	One Session
	March 17, 1997	-	One Session

Hearing Date/Session:	June 12, 1997	-	One Session
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The hearings were conducted at the offices of NASD Regulation, Inc. located in New York,

New York.

### **CASE SUMMARY**

Claimant alleged that Valente called him and recommended that he purchase Ecotyre stock, but that he told Valente that he had no funds available to purchase the stock. Claimant contended that, at that time, Valente recommended that he sell his stock in two other positions in order to purchase Ecotyre. Claimant maintained that Valente assured him that the loss he would incur by selling those other stocks would be insignificant compared to the gain he would make from Ecotyre. Claimant alleged that, based upon Valente's assurances, he sold his stock at a loss of \$895.00 and purchased Ecotyre. Claimant further alleged that, after he received his trade confirmation, he learned that he had purchased warrants and not stock as Valente had led him to believe.

Valente contended that claimant was a knowledgeable and sophisticated investor and that his investment objective was speculation. Valente maintained that, based upon the recommendation of the research department at LTL, he recommended Ecotrye warrants to claimant. Valente also alleged that he never recommended that claimant sell any of his positions and that claimant authorized and directed him to sell his stock positions. In addition, Valente maintained that he informed claimant that the recommended securities were warrants, not stocks, that he explained what a warrant was, and that he explained the risks inherent in such an investment. Moreover, Valente maintained that the investment was suitable for claimant.

LTL specifically denied all allegations set forth in the Statement of Claim. LTL maintained that any losses suffered were a result of market losses, that claimant ratified the transactions at issue, and that it was not responsible for Valente's actions.

### **RELIEF REQUESTED**

Claimant requested actual damages in the amount of \$9,910.00 plus reasonable interest, filing fees, and clerical expenses.

Valente requested that the Statement of Claim be dismissed in its entirety.

LTL requested that the Statement of Claim be dismissed in its entirety.

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

The arbitrator made the following determinations concerning respondent LTL, who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The arbitrator found that LTL was a member of the NASD at the time this controversy arose. Accordingly, the arbitrator found personal jurisdiction over

LTL pursuant to Rule 10301 of the Code.

3. The arbitrator found that LTL was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrator finds that claimant relied upon a representation of a contract between Ecotyre and Sears, but that claimant had a duty to mitigate and should have sold his position in Ecotyre by July 26, 1996 when the market value of the securities was \$5,100.00.
2. Valente and LTL be and hereby are jointly and severally liable for and shall pay to claimant the sum of **THREE THOUSAND NINE HUNDRED FIFTEEN DOLLARS (\$3,915.00)**.
3. Valente and LTL be and hereby are jointly and severally liable for and shall pay to claimant the sum of \$275.00 to reimburse claimant for the filing fees previously paid to NASD Regulation, Inc.
4. Claimant's request for interest is hereby denied.
5. All other requests are hereby denied.

#### **FORUM FEES**

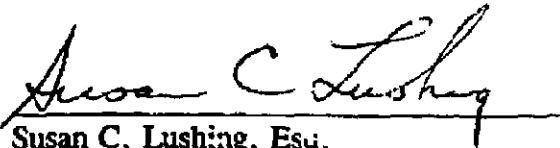
Pursuant to Rule 10332(c) of the Code, the arbitrator has assessed the following forum fees:

non-refundable filing fee	=	\$ 75.00
2 pre-hearing conferences x \$200.00	=	\$400.00
1 hearing session x \$200.00	=	\$200.00
<u>member surcharge</u>	=	<u>\$100.00</u>
Total	=	\$775.00

1. Valente and LTL be and hereby are jointly and severally liable for the sum of \$675.00, representing the filing fee and the fees assessed for the pre-hearing conferences and the hearing sessions conducted in this matter. Claimant previously deposited \$275.00 with NASD Regulation, Inc. and, therefore, Valente and LTL shall pay to NASD Regulation, Inc. the sum of \$500.00. Valente and LTL shall pay \$275.00 to claimant as provided in the "Award" section above.

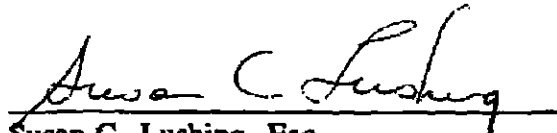
2. LTL be and hereby is liable for and shall pay to NASD Regulation, Inc. the sum of \$100.00 for the member surcharge.

**ARBITRATOR'S SIGNATURE**

  
Susan C. Lushing, Esq.  
Public Chairperson

Date of Decision: August 8, 1997

I, Susan C. Lushing, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Susan C. Lushing, Esq.