

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Paul Spadafore, and
Connie Spadafore,

Claimants and Counter-Respondents,

v.

Michigan Securities & Underwritings, Inc.,
Cantella & Co., Inc., and David L. Alexa,

Respondents, Counter-Claimants
and Third Party Claimants,

No. 96-03883

v.

Scott Spadafore,

Third Party Respondent.

Consolidated with:

Scott Spadafore,

Claimant and Counter-Respondent,

v.

No. 96-03882

Michigan Securities & Underwritings, Inc.,
Cantella & Co., Inc., and David L. Alexa,

Respondents and Counter-Claimants.

REPRESENTATION OF PARTIES

Claimants and Counter-Respondents Paul and Connie Spadafore and Claimant, Counter-Respondent, and Third-Party Respondent Scott Spadafore (collectively referred to as "Claimants") were represented by Scott L. Mandel, Esq. and Matt Hrebec, Esq. of Foster, Swift, Collins & Smith, P.C. located in Lansing, Michigan.

Respondent and Counter-Claimant Cantella & Company, Inc. ("Cantella") was represented by Richard M. Gelb, Esq. of Gelb & Gelb, LLP located in Boston, Massachusetts. Respondent Cantella was previously represented by Jeffrey P. Somers, Esq. of Morse Barnes-Brown & Pendleton, P.C. located in Waltham, Massachusetts.

Respondents, Counter-Claimants, and Third-Party Claimants Michigan Securities & Underwritings, Inc. ("MSU") and David L. Alexa ("Alexa") were represented by David L. Alexa of Michigan Securities & Underwritings, Inc. located in Lansing, Michigan. Respondents were previously represented by David T. Arlington, Esq. of Dykema Gossett PLLC located in Lansing, Michigan.

CASE INFORMATION

Re: Case No. 96-03883

The Statement of Claim of Paul Spadafore and Connie Spadafore was filed on or about August 30, 1996.

The Submission Agreement of Paul Spadafore and Connie Spadafore was signed on August 28, 1996.

The Statement of Answer and Counter-Claim of Cantella & Co., Inc. was filed on or about October 28, 1996.

The Submission Agreement of Cantella & Co., Inc. was signed on October 23, 1996.

The Statement of Answer and Third-Party Claim of Respondents Michigan Securities & Underwritings, Inc. and David L. Alexa was filed on or about October 28, 1996.

The Submission Agreement of Michigan Securities & Underwritings, Inc. and David L. Alexa was signed on October 28, 1996.

Claimants' Response to Counterclaim was filed on or about March 27, 1997.

Re: Case No. 96-03882

The Statement of Claim of Scott Spadafore was filed on or about August 30, 1996.

The Submission Agreement of Scott Spadafore was signed on August 29, 1996.

The Statement of Answer and Counter-Claim of Cantella & Co., Inc. was filed on or about October 28, 1996.

The Submission Agreement of Cantella & Co., Inc. was signed on October 23, 1996.

The Statement of Answer and Counter-Claim of Respondents Michigan Securities & Underwritings, Inc. and David L. Alexa was filed on or about October 28, 1996.

The Submission Agreement of Michigan Securities & Underwritings, Inc. and David L. Alexa was signed on October 28, 1996.

Claimants' Response to Counterclaim was filed on or about March 27, 1997.

HEARING INFORMATION

The telephonic pre-hearing conference was held on March 20, 1998 for one (1) session.

The hearing was held on March 24, 1998 for two (2) sessions, March 25, 1998 for two (2) sessions, and March 26, 1998 for two (2) sessions. The hearing location was Southfield, Michigan.

CASE SUMMARY

This claim involved the purchase of Farragut Mortgage Company ("Farragut") through Michigan Securities & Underwritings, Inc. by Paul and Connie Spadafore and Scott Spadafore. David L. Alexa is the President of Michigan Securities & Underwritings, Inc. Cantella & Company, Inc. was the clearing broker for Michigan Securities & Underwritings, Inc. Scott Spadafore was a registered representative of Michigan Securities & Underwritings, Inc., who was assigned the account of his father, Paul Spadafore.

In the Statement of Claim, Claimants alleged that they were solicited to purchase unregistered shares of Farragut through a private placement offering by Respondents Michigan Securities & Underwritings, Inc., Cantella & Co., and David L. Alexa (collectively referred to as "Respondents"). Claimants contended that Respondents falsely represented to Claimants that Farragut was a strong merger candidate. Claimants asserted that Respondents also falsely represented that the Farragut shares would be registered in the near future. Claimants maintained that, after several months and several denials by Alexa that the shares were registered, Claimants attempted to sell the shares. Claimant alleged that their trade was canceled because Respondents claimed the shares were restricted. Claimants contended that subsequent attempts to sell the shares "short" were unsuccessful due to Respondents' execution of transactions in their own account ahead of Claimants' order. Claimants alleged that as a result of Respondents' actions and failures to act, Paul and Connie Spadafore suffered damages in excess of \$49,000 and Scott Spadafore suffered damages of approximately \$15,000.

Respondent Cantella denied all liability to Claimants in its Statement of Answer and Counterclaim. Cantella alleged that it simply executed and/or cleared orders submitted by MSU as an "introducing broker." Cantella contended that it had no personal contact with customers of MSU, including Claimants. Cantella asserted that Claimants are liable to it for the full amount of any award entered against Cantella in this proceeding as well as for all Cantella's costs and expenses, including attorney fees.

MSU and Alexa also denied all liability in the Statement of Answer, Counter-Claim, and Third-Party-Claim. MSU and Alexa contended that Paul Spadafore was a sophisticated, experienced, aggressive, and accredited investor with a high net worth who understood and acknowledged the risks involved with the Farragut investment. MSU and Alexa maintained that Claimants were aware that the Farragut shares were restricted as demonstrated by Paul Spadafore's review of the Private Placement Memorandum concerning Farragut. MSU and Alexa asserted that they made no representations with respect to the registration of Farragut stock. MSU and Alexa contended that Claimants' attempt to sell the Farragut shares was contrary to applicable rules and regulations of the NASD and American Stock Exchange concerning the sale unregistered stock.

MSU and Alexa alleged that Scott Spadafore, in his capacity as registered representative for MSU, engaged in a continuum of acts which violated the various federal and state securities laws, statutes, and the rules and regulations of the NASD and NYSE.

RELIEF REQUESTED

In Case No. 96-03883, Paul and Connie Spadafore requested an award of approximately \$49,000.00, plus costs and interest, punitive damages, and attorney fees. Cantella requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs, and asserted that Paul and Connie Spadafore are liable to it for the full amount of any award entered against Cantella in this proceeding. MSU and Alexa also requested that the Statement of Claim be dismissed in its entirety with prejudice. In the Third-Party Claim, MSU and Alexa requested an award of \$57,500.00, plus punitive damages.

In Case No. 96-03882, Scott Spadafore requested an award of approximately \$15,000.00, plus costs and interest, punitive damages, and attorney fees. Cantella requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs, and asserted that Scott Spadafore is liable to it for the full amount of any award entered against Cantella in this proceeding. MSU and Alexa also requested that the Statement of Claim be dismissed in its entirety with prejudice. In the Counter-Claim, MSU and Alexa requested an award of \$75,100.00, plus costs and interest, as well as punitive damages.

OTHER ISSUES CONSIDERED & DECIDED

Paul, Connie, and Scott Spadafore reached a settlement with Cantella & Co., Inc. prior to the hearing on the merits. All claims were dismissed with prejudice.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) That Michigan Securities & Underwritings, Inc. and David L. Alexa are jointly and severally liable for and shall pay to Paul and Connie Spadafore the sum of \$16,065.00;
- (2) That all claims of Scott Spadafore are hereby dismissed in their entirety with prejudice;
- (3) That all claims of Michigan Securities & Underwritings, Inc. and David L. Alexa are hereby dismissed in their entirety with prejudice;
- (4) That David L. Alexa is liable for and shall pay to Paul and Connie Spadafore sanctions in the amount of \$1,000.00 for failure to comply with the panel's discovery order of September 17, 1997. In deciding to award this sum as sanctions, the panel considered the arguments of the parties and Section 10324 of the NASD Code of Arbitration Procedure, and determined that authority existed for an award of sanctions to Paul and Connie Spadafore;
- (5) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter, including any cost incurred by David L. Alexa in transcribing cassette tapes; and
- (6) That any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) hearing sessions x \$600 = \$3,600 in forum fees. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. Total forum fees = \$3,900. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the

arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Forum Fees of Paul, Connie and Scott Spadafore

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of Paul and Connie Spadafore in the amount of \$120, and shall retain the non-refundable filing fee of Scott Spadafore in the amount of \$100, and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited by Paul and Connie Spadafore, and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited by Scott Spadafore. Pursuant to §10332(c) of the Code, Paul, Connie and Scott Spadafore are jointly and severally liable for and shall pay forum fees in the amount of \$1,150.00 (1/2 total forum fees - hearing session deposits).

Forum Fees of Cantella & Co., Inc.

Pursuant to §10332(c) of the Code, Cantella is liable for and shall pay the non-refundable filing fees assessed in connection with the filing of its Counterclaim in both consolidated cases in the amount of \$1,000 (\$500 and \$500). Pursuant to §10319 of the Code, Cantella is liable for and shall pay postponement fees in the amount of \$600. Pursuant to §10333 of the Code, Cantella is liable for and shall pay member surcharge fees in the amount of \$400 (\$200 and \$200).

Forum Fees of Michigan Securities & Underwritings, Inc. and David L. Alexa

Pursuant to §10332(c) of the Code, MSU and Alexa are jointly liable for and shall pay the non-refundable filing fees assessed in connection with the filing of the Counterclaim and Third-Party-Claim in both consolidated cases in the amount of \$1,000 (\$500 and \$500). Pursuant to §10333 of the Code, MSU and Alexa are jointly liable for and shall pay member surcharge fees in the amount of \$400 (\$200 and \$200).

Pursuant to §10332(c) of the Code, MSU and Alexa are jointly and severally liable for and shall pay forum fees in the amount of \$1,950.00 (1/2 total forum fees).

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signature:

/s/ Barry Goldman

Barry Goldman
Panelist
Public Arbitrator

May 8, 1998

Dated:

/s/ John R. Main

John R. Main
Panelist
Industry Arbitrator

May 6, 1998

Dated:

Arbitrator's Signature, concurring, in part, and dissenting, in part:

I concur with the award of the panel, but would have ordered MSU and Alexa to pay Paul and Connie Spadafore \$4,819.50 in attorney fees. I also would have assessed all forum fees to MSU and Alexa.

/s/ George P. Doom

George P. Doom
Chairperson
Public Arbitrator

May 8, 1998

Dated:

For NASD Regulation use only:

Date award served on parties: May 12, 1998