

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gerry Fiecke

and

96-04062

Name of Respondent

Greenway Capital
Rocco Basile

REPRESENTATION OF PARTIES

Gerry Fiecke ("Claimant") was represented by pro se.

Greenway Capital ("Respondent") did not appear at the hearing.

Rocco Basile ("Respondent") did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about September 12, 1996. Submission Agreement of Claimant Gerry Fiecke was signed on October 8, 1996.

Statement of Answer was filed by Respondent Greenway Capital on or about October 10, 1996. Submission Agreement of Respondent Greenway Capital was signed on October 30, 1996 by Fred Luthy.

Statement of Answer was filed by Respondent Rocco Basile on or about January 2, 1997. Submission Agreement of Respondent Rocco Basile was signed on December 19, 1996.

HEARING INFORMATION

The hearing was held on Wednesday, August 20, 1997 for one (1) session in Minneapolis, Minnesota.

CASE SUMMARY

Claimant alleged that Respondents failed to execute an order to sell 2000 shares of Ophthalmic Imaging Systems ("OISI"). Specifically, Claimant alleged that Rocco Basile cold called him and recommended the purchase of 2,000 shares of OISI at a price of 4¼ and that they would sell the stock within 30 days when the price reached 6½. Claimant purchased the stock as recommended, after the price of the stock reached 6¼, Claimant called to sell, was advised to hold. It was alleged that shortly thereafter the stock price increased further and then began to drop. When the price reached 6½, Claimant called and entered an order to sell the 2,000 shares at that price. Claimant alleged that Respondents failed to execute that order.

Respondent Greenway denied the allegations asserted against it. Respondent Greenway asserted affirmative defenses including but not limited to : ratification; the losses complained of are the result of market losses; contributory negligence; and the claims are barred by the doctrines of estoppel and unclean hands.

Respondent Basile denied the allegations asserted in the Statement of Claim. Specifically, Respondent Basile denied ever speaking to Claimant or transacting any purchases or sales for the Claimant's account. Respondent Basile also asserted a number of affirmative defenses to the claims.

RELIEF REQUESTED

Claimant requested an award of damages in the amount of \$5,843.33. Claimant also requested an award of interest and costs.

Respondent Greenway requested that the claims asserted against it be dismissed in their entirety.

Respondent Basile requested that the claims asserted in this matter be dismissed in their entirety and for such further relief as is just.

OTHER ISSUES CONSIDERED & DECIDED

The undersigned arbitrator has determined that Respondents Greenway and Basile had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Prior to the hearing, Respondent Greenway had notified the NASD Regulation, Inc. Office of Dispute Resolution staff that it did not intend on attending the hearing in this matter and that it would rely on the written submissions.

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. Respondent Greenway Capital shall be and hereby is liable for and shall pay to the Claimant the sum of \$6,343.33 (**six thousand three hundred forty three dollars and thirty three cents**) as compensatory damages. The claims asserted against Rocco Basile are dismissed in their entirety.
2. Interest at the rate of 5% per annum is awarded on the above stated sum from and inclusive of May 8, 1996 to and inclusive of the date this award is paid in full.
3. All other requests for relief are denied including but not limited to the request for reimbursement of costs and fees.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session. There was one (1) session x \$200 = \$200 in forum fees. Pursuant to Rule 10332(b) 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.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution ("NASD") Respondent Greenway Capital shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$200 as forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall assess against Respondent Greenway Capital the non-refundable member surcharge in the amount of \$100. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ D. Randall Blohm, Esq.
D. Randall Blohm, Esq.
Public Arbitrator, Presiding Chair
Public Arbitrator

August 29, 1997