

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Gregory J. Andro and Iva Andro,

Claimants,

and

No. 96-04282

Sterling Foster & Co., Inc., and Doug Magnuson,

Respondents.

REPRESENTATION OF PARTIES

Claimants, Gregory J. Andro and Iva Andro, were represented pro se.

Respondents, Sterling Foster & Co., Inc. and Doug Magnuson, were represented by Justin Sacca, Esquire, of the law offices of Joseph D'Elia, Huntington, New York, but they were not represented at the hearing in this matter.

CASE INFORMATION

Gregory J. Andro and Iva Andro's Statement of Claim was filed on or about September 5, 1996.

Gregory J. Andro and Iva Andro's Submission Agreement was signed on October 30, 1996.

Sterling Foster & Co., Inc. and Doug Magnuson's Statement of Answer was filed on or about December 16, 1996.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed submission agreement from either Sterling Foster & Co., Inc. or Doug Magnuson.

HEARING INFORMATION

The hearing was held on: July 9, 1997 for one (1) session.

The hearing was held in Phoenix, Arizona.

CASE SUMMARY

Claimants, Gregory J. Andro ("Mr. Andro") and Iva Andro (hereinafter collectively referred to as "Claimants"), both Arizona residents, brought this action as a result of losses in their account allegedly resulting from trades that were promised, but not made, by Doug Magnuson ("Mr. Magnuson"), a registered representative of Sterling Foster & Co., Inc. ("Sterling").

According to Claimants, Mr. Andro initially spoke to Mr. Magnuson about initial public offerings ("IPOs"). Claimants stated that, upon the recommendation of Mr. Magnuson, they purchased 100 shares of Gaylord Entertainment Co. at a total purchase price of \$2,809.00 on February 1, 1996. Claimants further stated that, around March 5, 1996, Mr. Magnuson contacted Mr. Andro about a new IPO called Applewoods, Inc., which Mr. Magnuson was instructed to purchase upon the sale of the Gaylord Entertainment Co. shares. Claimants asserted that although the Gaylord shares were sold with a net amount to Claimants of \$2,490.41 on March 13, Mr. Magnuson executed a buy on Acclaim Entertainment Co. on March 13 for 200 shares at a total cost of \$2,462.00. Claimants then averred that, on April 10, Mr. Magnuson was instructed to sell Acclaim Entertainment and buy 300 shares of Applewoods, Inc. at the IPO price of \$5 to \$10 per share. However, Claimants asserted, 300 shares of Applewoods, Inc. were purchased on April 11 at \$13.75 per share, the shares of Acclaim Entertainment were never sold, and a sum of \$4,137.00 was requested to pay for the purchase of the Applewoods, Inc. shares. Claimants further averred that Mr. Magnuson informed them that had they invested \$25,000 they could have become preferred customers and inferred that they would have gotten the shares of Applewoods, Inc. at the IPO price. Claimants contended that on April 23, they received April 19 confirmations of the cancel to buy Applewoods, Inc. and the sale of the 200 shares of Acclaim Entertainment at \$9.00 per share for a total net price of \$1,788.00. Claimants finally reported that on April 26 they received a check in the amount of \$1,825.41 closing out their account, which resulted in a loss of nearly \$1,000.

Sterling and Mr. Magnuson (hereinafter collectively referred to as "Respondents") denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. Respondents stated that Mr. Magnuson indicated to Mr. Andro that Applewoods, Inc. was not approved to be offered to residents of Arizona pursuant to state Blue Sky laws, but that Claimants should consider purchasing it on the secondary market. Respondents averred that Mr. Magnuson placed a market order for Applewoods, Inc., on margin, which was filled at \$13³/₄ because the price of Acclaim Entertainment Co. begun to rise after slipping in early April, and he indicated to Mr. Andro that this position would be sold prior to the settlement date for the Applewoods, Inc. purchase. According to Respondents, when Mr. Andro agreed, Acclaim Entertainment Co., which had been purchased at \$7⁵/₈ per share on April 12, 1996, was finally sold for \$9 per share on April 16, 1996 when Mr. Andro closed out his account. Respondents asserted that this claim involves losses of approximately \$825 on losses of two securities and that all transactions in Claimants' account were made with Mr. Andro's knowledge and approval.

RELIEF REQUESTED

Claimants, Gregory J. Andro and Iva Andro, requested an award for: punitive damages in the amount of \$10,000 and all attorney costs associated with this hearing.

Respondents, Sterling Foster & Co., Inc. and Doug Magnuson, requested that the claims asserted against them be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Claimants, Gregory J. Andro and Iva Andro, the undersigned arbitrators have determined that Respondents, Sterling Foster & Co., Inc. and Doug Magnuson, have been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also determined that Respondents, Sterling Foster & Co., Inc. and Doug Magnuson, had received due notice of the hearing as required under § 10318 of the Code.

Respondents filed a request that their position be considered on the papers since they did not plan to attend the hearing. Respondents made an alternative request that they be allowed to make a short telephonic statement on July 9, 1997. After consideration of the parties positions with respect to this issue, the undersigned arbitrator allowed Respondents to make the statement.

Respondents, Sterling Foster & Co., Inc. and Doug Magnuson, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but are required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having answered the claim are bound by the determination of the arbitration panel on all issues submitted.

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 the 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. Respondents are jointly and severally liable for and shall pay to Gregory J. Andro and Iva Andro the sum of \$674 as satisfaction for their claim relating to Acclaim Entertainment. Further, Respondents are jointly and severally liable for, and shall pay to Gregory J. Andro and Iva Andro the sum of \$275 for the costs of filing this

arbitration.

2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing sessions x \$200 = \$200 in forum fees. 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.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$75 and shall **retain** as forum fees the hearing session deposit in the amount of \$200 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimants. The hearing session deposit overpayment of \$225 shall be refunded to the Claimants.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$100 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Sterling Foster.

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

Concurring Arbitrators' Signatures

Glenn C. Johnson
Glenn C. Johnson
Panelist
Public Arbitrator

July 17, 1997
Dated: