

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Patrick A. Porter

96-04303

Name of Respondents

Greenway Capital Corp.
Peter Delbaso
Jack Basile

REPRESENTATION

Claimant Patrick A. Porter ("Claimant") appeared *pro se*.

Respondents Greenway Capital Corp. ("Greenway"), Peter DelBalso ("DelBalso") and Jack Basile ("Basile") did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed September 27, 1996.

Claimant's Uniform Submission Agreement was signed October 16, 1996.

The Statement of Answer of Respondent Greenway was filed May 8, 1997.

Greenway's Uniform Submission Agreement was signed May 14, 1997.

The Joint Statement of Answer of Respondents DelBalso and Basile was filed January 16, 1997.

DelBalso's Uniform Submission Agreement was signed January 9, 1997.

Basile's Uniform Submission Agreement was signed December 31, 1996.

HEARING INFORMATION

Prehearing Date/Sessions: June 24, 1997/one session

Hearing Date/Sessions: August 27, 1997/two sessions

Hearing Location: NASD Regulation Headquarters
Washington, D.C.

CASE SUMMARY

Claimant alleged that he opened an account with Greenway after receiving a cold call from DelBalso in October 1995. Claimant alleged that he authorized the purchase of Smartel after DelBalso made misrepresentations concerning the strength of the company and guaranteed a ten percent downside of the stock. Claimant alleged that when Smartel stock fell, he asked DelBalso about it but was repeatedly

assured by DelBalso that it would return to its former level very soon. Claimant then asserted that in March 1996 DelBalso suggested Claimant sell Smartel and purchase QuarterDeck to make a profit while waiting for an Initial Public Offering DelBalso would have available very soon. Again, Claimant alleged that DelBalso assured Claimant that he would recoup some of the losses if he followed DelBalso's advice. Claimant alleged that on April 15, 1996, DelBalso called soliciting the purchase of units in the IPO Dialysis Corporation of America ("DCAI") at \$3.75 per unit. Claimant asserted that he informed DelBalso that he would invest \$50,000.00 in DCAI at \$3.75 per unit. However, Claimant alleged that on the opening day of DCAI he received a call from DelBalso stating that he could not get the units in the IPO but was able to get 10,000 shares of common stock at \$6.75 per share. Claimant alleged that he specifically told DelBalso he did not want the common stock and that he was to cancel any order he placed for common stock. Claimant alleged that he still received a confirmation for the purchase of 10,000 shares of DCAI several days later, on which he wrote "cancel" directly on the confirmation and returned it to Greenway's clearing house. Claimant alleged that when he tried to reach DelBalso about the shares, DelBalso said that the trade had already gone through and there was nothing he could do about it. As a result, Claimant alleged that his account was liquidated at a loss to cover the transaction.

Claimant then alleged that in July 1996 he received a call from Basile, also employed by Greenway. Claimant asserted that Basile said he was taking over Claimant's account and that he could make up for the loss that had occurred in dealing with DelBalso. Claimant alleged that Basile induced him to allocate \$50,000.00 towards Eastwind on July 11, 1996. Claimant then alleged that on the morning of July 12, 1996, he called Basile to tell him that he would not have the funds available for the Eastwind transaction after all. Claimant alleged that when Basile offered him an extension past the three day limit, Claimant reiterated that the transaction had to be canceled because Claimant was not expecting any additional funds in the following week. However, Claimant alleged he still received a confirmation statement for the purchase of Eastwind on July 17, 1996 and immediately called Basile to reconfirm that the order had been canceled. When Claimant returned from a business trip in mid August, he alleged that he discovered that his entire account had been liquidated and he had a zero balance. Claimant made numerous attempts to reach Greenway management, as well as DelBalso and Basile, but they would not return his calls. In addition, Claimant alleged that he was informed that the Virginia State Corporation Commission did not have a statement from DCAI indicating that they had ever been approved by the SEC and that Eastwind was not registered in Virginia.

Respondent Greenway, in the Statement of Answer filed with NASD Regulation, denied allegations of wrong-doing as asserted in the Statement of Claim. Greenway maintained that Claimant's actions constituted ratification of the transactions. In addition, Greenway raised the affirmative defenses of failure to state a claim upon which relief can be granted; failure to do due diligence; contributory negligence; that Claimant authorized and directed the execution of all transactions; estoppel and waiver; and assumption of risk.

Respondents DelBalso and Basile (collectively "Respondents"), in their Joint Statement of Answer filed with NASD Regulation, denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that they operated fully within the provisions of all applicable federal and state securities laws and in accordance with industry rules and customs. Respondents denied that they guaranteed Claimant no more than 10% loss on any investment or that they guaranteed specific profits or gains. In addition, Respondents denied allegations that any unauthorized transactions were made in Claimants' accounts. Respondents raised the affirmative defenses of a failure to state a claim upon which relief can be granted; bar to any recovery by reason of Claimant's failure to timely object to any transaction as required by contract; contributory negligence; damages are speculative and remote; laches; ratification; estoppel and waiver.

RELIEF REQUESTED

Claimant requested damages of \$25,687.50 plus exemplary damages of \$7,500.00.

In its Answer, Respondent Greenway requested the Statement of Claim be dismissed.

In their Answer, Respondents DelBalso and Basile requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant agreed at the hearing 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 Claimant agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The panel determined that Respondents Greenway Capital, DelBalso and Basile received due notice of the hearing as required under Rule 10315 of the Code of Arbitration Procedure ("Code") and that notwithstanding Respondents failure to appear, that the hearing would proceed pursuant to Rule 10318 of the Code and that Respondents were bound by all rulings of the panel.

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 Respondent DelBalso and Greenway Capital Corp. are jointly and severally liable to and shall pay to Claimant \$5,162.50.
2. That Respondent Basile and Greenway Capital Corp. are jointly and severally liable to and shall pay to Claimant \$7,020.00.
3. That Respondents Basile, DelBalso and Greenway Capital Corp. are jointly and severally liable to and shall reimburse Claimant for the \$400.00 hearing session deposit previously submitted to the NASD Regulation.
4. That the claim for exemplary damages is denied.
5. That each party shall bear its own costs and expenses.
6. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 Respondent Greenway Capital Corp is assessed a member surcharge of \$200.00.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 Prehearing Session x \$300.00 =	\$ 300.00
2 Hearing Sessions x \$400.00 =	\$ 800.00
Total Forum Fees	\$1,100.00

Forum Fees are assessed to Respondents Greenway Capital, Basile and DelBalso, jointly and severally. Respondents are to receive credit for the \$400.00 hearing session deposit submitted by Claimant to the NASD Regulation, and ordered to be reimbursed directly to Claimant by Respondents, leaving a net forum fees assessment due from Respondents of \$700.00.

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

DATE

9/3/97

CONCURRING ARBITRATORS' SIGNATURES

Bruce Sanders

Bruce Sanders, Presiding
Public Arbitrator

David L. Ruderman
Public Arbitrator

Lois J. Cohen
Industry Arbitrator

Date Decision Served by NASD Regulation:

September 12, 1997

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Public Arbitrator

David L. Ruderman
Public Arbitrator

Lois J. Cohen
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Industry Arbitrator

9/11/97
Date Decision Served by NASD Regulation: *September 12, 1997*