

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

John F. Smithgall

96-04487

Names of Respondents

Investors Associates, Inc
Michael W. Hawkins

REPRESENTATION

For Claimant John F. Smithgall ("claimant") appeared David L. Turner, Esq. of the law offices Schulten Ward & Turner located in Atlanta, Georgia.

For Respondent Investors Associates, Inc. ("IAI"), appeared M. David Sayid, Esq. of the law offices Sayid & Associates located in Hackensack, New Jersey.

Michael W. Hawkins ("Hawkins") appeared pro-se.

CASE INFORMATION

Statement of Claim was filed on: October 8, 1996.

First Amended Statement of Claim was filed on: March 7, 1997.

Claimant's Submission Agreement was signed on: October 4, 1996.

Statement of Answer was filed by IAI on: November 29, 1996.

IAI's Submission Agreement was signed on: November 8, 1996.

Statement of Answer was filed by Hawkins on: November 15, 1996.

Hawkins' Submission Agreement was signed on: November 8, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: May 7, 1997 - 2 sessions

The hearings were conducted at the Grand Hyatt Hotel located in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that, in June 1995, Hawkins persuaded him to purchase 37,500 shares of common stock of BioSafe International, Inc. ("BSI"), plus 37,500 Class C warrants and 37,500 Class D warrants. Claimant contended that BSI was not quoted on the NASDAQ system at the time of the purchase, that its price was reflected only in the "pink sheets" and, therefore, a well established market did not exist for BSI stock at the time of purchase. In addition, claimant maintained that, prior to entering into this transaction, he and Hawkins executed a "Security Agreement and Affidavit" ("Agreement"), in which Hawkins agreed to indemnify and reimburse claimant for the first \$100,000.00 in losses, if any, sustained plus 10% interest from June 8, 1995. Claimant further contended that, pursuant to the Agreement, Hawkins was to participate in 10% of the net profits accruing to claimant as a result of the BSI securities purchase. Claimant also alleged that Hawkins misrepresented the market value of the BSI securities.

Claimant further maintained that, in November 1995, Hawkins persuaded him to purchase common stock of California Fresh Baking Co. ("CFB"). Claimant alleged that CFB was a private placement under Regulation D which could only be resold in an exempt transaction, that there was no public market for the stock, and that the securities were nearly worthless. Claimant also contended that he and Hawkins entered into another Agreement, whereby Hawkins indemnified claimant for half of the investment, plus 10% interest from November 27, 1995 forward.

In addition, claimant alleged that IAI was vicariously liable for Hawkins' conduct because: 1) Hawkins represented himself as an employee of IAI; 2) aspects of the transaction appeared on IAI stationery; and 3) IAI controlled the time, manner, means and methods of Hawkins' affairs. Claimant also maintained that IAI's responsibility was evidenced by the fact that the transactions were confirmed on monthly client statements sent by IAI and that the two transactions were coordinated through IAI's designated clearing firm.

IAI alleged that the securities in issue were not purchased through them, but through another broker. Furthermore, IAI maintained that the securities claimant purchased were not securities for which IAI had a due diligence package or for which it even had a chance to review and approve their sale. In addition, IAI asserted the following affirmative defenses: 1) it did not violate any written contract, regulation, or law; 2) claimant assumed the risk of his transactions; 3) claimant authorized the purchase and sale of all transactions maintained with IAI; 4) claimant had, or should have had, full knowledge of material facts concerning his accounts with IAI; and 5) the Statement of Claim failed to state a cause of action upon which relief could be granted.

Hawkins maintained that claimant was a highly sophisticated and an accredited investor who had a history of investments with IAI in highly speculative and risky equities. Hawkins also maintained that claimant signed prospectuses for both BSI and CFB which outlined the risks inherent in investing in these companies and that claimant was aware that CFB was a privately held company, which might never go public or materialize an active market for its stock. In addition, Hawkins contended that CFB was a suitable investment for an investor of claimant's sophistication.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$277,312.50 plus interest, court costs and attorneys' fees. In addition, claimant requested treble, punitive, and any other damages allowed by law.

IAI requested that the Statement of Claim be denied in its entirety and that it be awarded no less than \$5,000.00 for costs, expenses, and fees.

Hawkins requested that claimant's claims be dismissed in their entirety.

AWARD

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

1. IAI and Hawkins be and hereby are jointly and severally liable and shall pay to claimant the sum of **TWO HUNDRED ELEVEN THOUSAND FIVE HUNDRED DOLLARS** (\$211,500.00).
2. IAI and Hawkins be and hereby are jointly and severally liable and shall pay to claimant punitive damages in the amount of \$1.00. The arbitrators award punitive damages in accordance with Mastrobuono v. Shearson Lehman Hutton, Inc., 115 S. Ct. 1212.
3. IAI and Hawkins be and hereby are jointly and severally liable and shall pay claimant the sum of \$1,250.00 to reimburse claimant fees previously paid to NASD Regulation, Inc.
4. Claimant's requests for interest, attorneys' fees, and treble damages are hereby denied.
5. All other requests are hereby denied.

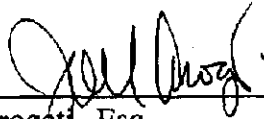
FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

| | | |
|---------------------------------|---|------------|
| non-refundable filing fee | = | \$ 250.00 |
| 2 hearing sessions x \$1,000.00 | = | \$2,000.00 |
| member surcharge | = | \$ 500.00 |

1. IAI and Hawkins be and hereby are liable for \$2,250.00, representing the filing fee and the fees assessed for hearings in this matter. Claimant previously deposited \$1,000.00 with NASD Regulation and, therefore, IAI and Hawkins shall pay \$1,000.00 to NASD Regulation, Inc. Respondents shall pay \$1,250.00 to claimant as provided in the "Award" section above.
2. IAI be and hereby is liable and shall pay the sum of \$500.00, representing the amount of the member surcharge.

Arbitrators' Signatures



Joel Arogeti, Esq.
Chairperson-Public Arbitrator

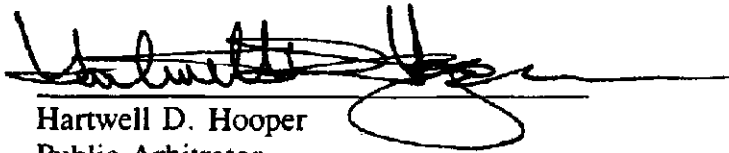
Hartwell D. Hooper
Public Arbitrator

Barbara Marie Bantivoglio
Industry Arbitrator

Date of Decision: July 18, 1997

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Chairperson-Public Arbitrator



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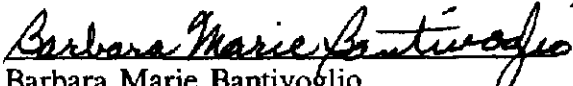
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