

## NASD REGULATION AWARD

---

In the Matter of the Arbitration Between

Name of Claimant

William J. Turkowski

96-04555

Name of Respondents

Lew Lieberbaum & Co., Inc.  
Brian T. McCluskey  
Robert Wetzel

---

**REPRESENTATION**

Claimant William J. Turkowski ("claimant") appeared pro se.

Prior to the hearing in this matter claimant withdrew with prejudice all claims against respondent Lew Lieberbaum & Co., Inc. ("Lew Lieberbaum"). Therefore, no representative appeared at the hearing on behalf of this respondent.

For respondent Brain McCluskey ("McCluskey") appeared Joseph F. Keenan, Esq. of the law firm of Bochat & Keenan, P.C. located in Garden City, New York.

Respondent Robert Wetzel did not appear at the hearing in this matter.

**CASE INFORMATION**

Statement of Claim was filed on October 10, 1996. Claimant's Submission Agreement was signed on October 9, 1996.

Statement of Answer was filed by Lew Lieberbaum on November 18, 1996. Lew Lieberbaum's Submission Agreement was signed on November 15, 1996.

Statement of Answer was filed by McCluskey on November 22, 1996. McCluskey's Submission Agreement was signed on November 12, 1996.

**HEARING INFORMATION**

Hearing Dates/Sessions:

March 12, 1997

-

One Session

The hearing was held at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that, on January 4, 1995, McCluskey, an employee of Lew Lieberbaum, called him and said that his friend, Robert Wetzel ("Wetzel"), an officer in AGT Sports, was willing to sell him shares in AGT Sports. Claimant further alleged that he sent a check to Wetzel and later he received stock certificates. Claimant contended that he later learned through the SEC that AGT Sports had no income or sales and that the stock he had purchased was restricted stock. Claimant further contended that respondents never told him that the stock was restricted or explained to him what this meant.

Lew Lieberbaum maintained that claimant bought the restricted stock directly from Wetzel, that the transaction did not appear on any Lew Lieberbaum account statements, that Lew Lieberbaum did not pay McCluskey a commission for the trade and that Lew Lieberbaum had no knowledge that the trade took place.

McCluskey denied all allegations of wrongdoing. McCluskey maintained that he advised claimant, prior to his purchase of the stock, that the stock he was purchasing was restricted stock. McCluskey further maintained that claimant was made aware that AGT Sports was a start up company and that there were risks inherent in the investment. McCluskey further contended that the losses which occurred were due to market conditions.

---

### **RELIEF REQUESTED**

Claimant requested the sum of \$6,750.00.

Lew Lieberbaum requested a judgment be entered against claimant.

McCluskey requested that the claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

By letter dated December 11, 1996, claimant advised the NASD that he was withdrawing all claims against Lew Lieberbaum with prejudice.

The arbitrator determined that Robert Wetzel was not a person associated with a member of the NASD and, therefore, he was not required to submit to the NASD jurisdiction in this matter. Robert Wetzel did not voluntarily submit to the NASD's jurisdiction and, therefore, all claims against Robert Wetzel are dismissed without prejudice.

### **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 McCluskey be and hereby is liable and shall pay claimant the sum of \$6,750.00.
2. This award is without prejudice to respondent McCluskey seeking indemnification from others in another jurisdiction.
3. Each party shall bear their own costs.

#### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrator has determined that NASE Regulation shall retain the \$75.00 filing fee and \$200.00 hearing session deposit as full consideration for the hearing held in this matter.

#### Arbitrator's Signature

*Diane Getzler, Esq.*

Diane Getzler, Esq.  
Public Arbitrator

Date of Decision: June 4, 1997

I, Diane Getzler, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

*Diane Getzler, Esq.*

Diane Getzler, Esq.