

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

William Gilroy,

Claimant.

= :

= : v.

No. 96-04604

J. Gregory & Company,
Sterling Foster & Co., Inc.,
William E. Scuteri, Thomas Gebbia,
and Vincent M. Carella,

Respondents.

REPRESENTATION OF PARTIES

Claimant William Gilroy ("Claimant") was represented by Steve J. Weiss, Esq. and Miles D. Hart, Esq. of Hertz, Schram & Satetsky, P.C. located in Bloomfield Hills, Michigan.

Respondent Sterling Foster & Co., Inc. ("Sterling Foster") was represented by Joseph D'Elia, Esq. of Huntington, New York.

Respondents William E. Scuteri ("Scuteri"), Thomas Gebbia ("Gebbia"), and Vincent M. Carella ("Carella") appeared pro se. Respondents Gebbia and Carella were previously represented by Joseph D'Elia, Esq. of Huntington, New York.

Respondent J. Gregory & Company ("J. Gregory") did not appear in this matter.

CASE INFORMATION

The Statement of Claim was filed on or about October 15, 1996.

Claimant's Submission Agreement was signed on November 21, 1996.

The Joint Statement of Answer of Respondents Sterling Foster, Gebbia, and Carella was filed on or about February 28, 1997.

The Joint Submission Agreement of Respondents Sterling Foster and Gebbia was signed on February 3, 1997.

The Submission Agreement of Respondent Carella was signed on February 13, 1997.

Respondents J. Gregory and Scuteri did not file a Statement of Answer or a signed Submission Agreement.

HEARING INFORMATION

The hearing was held on May 27, 1998 for one (1) session in Southfield, Michigan.

CASE SUMMARY

Claimant contended that Respondents recommended and sold highly speculative and risky investments, including Global Spill Management Company and New Day Beverage, Inc. Claimant alleged that these investments were unsuitable based on his conservative investment objectives. Claimant maintained that Respondents engaged in fraud and misrepresentation involving their failure to disclose the risks associated with the investments at issue. Claimant alleged that he received repeated cold call solicitations from Respondent Scuteri, a registered representative of Respondent J. Gregory. Claimant contended that after Scuteri gained control of Claimant's account, Scuteri urged Claimant to engage in stock trading as a suitable investment strategy. Claimant asserted that he followed Respondent Scuteri's suggestions and began losing money. Claimant maintained that after J. Gregory transferred Claimant's account to a new broker, Respondent Gebbia, Gebbia assured Claimant that J. Gregory would "straighten out the losses" and informed Claimant that the account would move to Respondent Sterling Foster. Claimant alleged that Gebbia's trading continued the pattern established by Scuteri, and losses continued to flow through the account. Claimant contended that after his account was again transferred to a new broker, Respondent Carella, Carella continued the pattern established by Scuteri and followed by Gebbia. Under Carella, Claimant asserted that his account losses continued and Claimant eventually lost virtually all of the \$48,000 initially invested.

In their Statement of Answer, Respondents Sterling Foster, Gebbia and Carella denied that they were responsible for Claimant's losses. Respondents alleged that Claimant was a sophisticated and experienced investor who understood and acknowledged the risks involved with the investments at issue. Respondents asserted that Claimant told his broker that he was employed as the Vice President of a printing company and that he had an approximate net worth of \$250,000. Respondents contended that Claimant was well advised of the nature and risks of each investment, and that these investments were reasonable in light of Claimant's aggressive investment objectives and financial circumstances.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested full reimbursement of all losses in his accounts, interest, costs and attorney fees.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent J. Gregory filed for bankruptcy. Pursuant to these filings, all matters concerning J. Gregory were indefinitely stayed.

Respondent Gebbia reached a settlement with Claimant prior to the hearing on the merits.

Respondent Scuteri's request to appear and testify by phone was granted. Respondent Scuteri could not be reached by phone on the day of the hearing.

Respondents Sterling Foster, Scuteri, Carella did not appear at the hearing. Upon review of the file and representations of the Claimant, the undersigned arbitrators have determined that these Respondents have received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

The hearing and award is predicated on the representation of Claimants' counsel that each Claimant has opted out of related class-action proceedings and that the relevant orders exist with respect thereto.

The parties present at the hearing 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 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) That Respondent Sterling Foster & Co., Inc. is liable for and shall pay to Claimant William Gilroy compensatory damages in the amount of \$45,968.00, plus interest at 6% from date of filing;
- (2) That Respondents Sterling Foster & Co., Inc. and William E. Scuteri are jointly and severally liable for and shall pay to Claimant William Gilroy compensatory damages in the amount of \$26,033.00, plus interest at 6% from date of filing;
- (3) That Respondents Sterling Foster & Co., Inc. and Vincent M. Carella are jointly and severally liable for and shall pay to Claimant William Gilroy compensatory damages in the amount of \$11,579.00, plus interest at 6% from date of filing;
- (4) That Respondents Sterling Foster & Co., Inc., William E. Scuteri, and Vincent M. Carella are jointly and severally liable for and shall pay to Claimant William Gilroy costs in the amount of \$1,507.67 and attorney fees in the amount of \$15,322.66;
- (5) That the panel finds specific facts as follows: all Respondents including Thomas Gebbia engaged in the following unauthorized and illegal acts: fraud, misrepresentation, self-dealing, high pressure sales tactics, unsuitability, and failure to follow the NYSE/NASD rules regarding due diligence and know your customer; and
- (6) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing session x \$400 = \$400 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall refund the hearing session deposit in the amount of \$400 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondents Sterling Foster & Co., Inc., William E. Scuteri, and Vincent M. Carella are jointly liable for and shall pay forum fees in the amount of \$400 (total forum fees).

Pursuant to §10319 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Respondent Sterling Foster's postponement deposit in the amount of \$400. Pursuant to Rule 10333 of the Code, Respondent Sterling Foster shall pay to NASD Regulation, Inc. the \$200 past due member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures:

\s\ Tracy L. Allen, Esq.
Tracy L. Allen, Esq.
Chairperson
Public Arbitrator

May 29, 1998
Dated:

\s\ Donald A. Edwards, Esq.
Donald A. Edwards, Esq.
Panelist
Public Arbitrator

May 29, 1998
Dated:

\s\ Harold I. Gach, Esq.
Harold I. Gach, Esq.
Panelist
Industry Arbitrator

May 30, 1998
Dated:

For NASD Regulation use only:
Date award served on parties:

June 2, 1998