

ARBITRATION AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Donald G. Wilson

96-04865

Name of Respondents

Sterling Foster & Co., Inc.;
Charles Volpe;
Phil Valentin;
Adam Lieberman; and
James Buschle

REPRESENTATION

For Claimant: Donald G. Wilson was represented by Robert J. Kuker, Esq. of Neal Gerber & Eisenberg, located in Chicago, Illinois.

For Respondents: Respondents Sterling Foster & Co., Inc. ("Sterling Foster"), Charles Volpe ("Volpe"), Phil Valentin ("Valentin"), and Adam Lieberman ("Lieberman") were represented by Rawn Howard Reinhard, Esq. of Ungaretti & Harris, located in Chicago, Illinois. James Buschle ("Buschle") was represented by Robert A. Giacovas, Esq. of Lazare Potter & Giacovas LLP, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: November 1, 1996.

Claimant's Submission Agreement signed on: October 30, 1996.

Statement of Answer filed by Respondents on: January 29, 1997.

Respondents did not file executed Submission Agreements.

HEARING INFORMATION

Pre-Hearing Conference: April 24, 1997 before One (1) arbitrator; and
August 26, 1997 before One (1) arbitrator.

Hearing Dates/Sessions: January 21, 1998 for Two (2) sessions; and
January 22, 1998 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondents engaged in fraud and a stock manipulation scheme, inducing Wilson to make his transactions in several IPOs underwritten by Stirling Foster. In addition, Respondents misrepresented the transfer and failed to execute Wilson's written and oral instructions to sell a stock named ML Direct in his account. Based upon the allegations of the Statement of Claim, Wilson asserted claims for breach of fiduciary duty; violation of the NASD conduct rules; breach of contract; misrepresentation and fraud; *respondeat superior*; violation of the Federal securities laws; and violation of the Illinois securities laws.

Respondents denied the material allegations of the Statement of Claim, alleging that Claimant failed to direct the firm to complete the transactions in ML Direct. In addition, Respondents did not provide any improper sales incentives to brokers or engaged in any wrongful conduct. The Respondents alleged that their actions were motivated by belief in the potential of the transactions as long-term investments. In addition, Respondents asserted several affirmative defenses.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for \$78,500.00 representing the losses incurred and the lost profits from the transactions in ML Direct; over \$63,000.00 for the losses incurred in the transactions in the remaining stocks; punitive damages for twice the actual damages; reasonable attorneys' fees, expert witness fees, forum fees, costs and expenses; and such other relief as the panel deemed just.

Respondents requested that the claim be dismissed with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

Respondents did not file executed submission agreements, but are required to submit to arbitration pursuant to NASD Arbitration Rule 10301.

Respondents requested a stay of proceedings. The arbitrators reviewed the request, and all responses, and determined on June 2, 1997 that the motion was denied. On January 8, 1998, Claimant filed a Request for an Early Exclusion from the class action filed against Sterling Foster and representatives. Respondents moved for an postponement or stay of proceedings based upon the pending class action on January 14, 1998. The panel reviewed the Motion and all subsequent pleading regarding the stay and determined on January 20, 1998 that the motion was denied.

At hearing, Respondents Buschle and Valentin presented a Motion to Dismiss at the conclusion of Claimant's case. The panel took the motion under advisement. The Motion is denied.

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 originals remain on file with the NASD.

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 Stirling Foster & Co., Inc., Charles Volpe, Phil Valentin, Adam Lieberman and James Buschle are jointly and severally liable for and shall pay to the Claimant, Donald G. Wilson, the sum of \$79,015.00 as actual damages with respect to the ML Direct claim, plus interest in the sum of \$4,938.00 representing interest accruing from September 20, 1996 until the date of hearing. Respondents are jointly and severally liable for and shall pay additional interest on the actual damages of \$79,015.00 at the rate of 9% per annum accruing from January 21, 1998 until the award is paid in full;
2. In addition, Respondents Stirling Foster & Co., Inc., Charles Volpe, Phil Valentin, Adam Lieberman and James Buschle are jointly and severally liable for and shall pay to the Claimant, Donald G. Wilson, the sum of \$20,000.00 as punitive damages. In deciding to award punitive damages, the panel considered the arguments and pleadings presented by the parties and determined that authority existed for an award of punitive damages to the Claimant;
3. Furthermore, Respondents Stirling Foster & Co., Inc., Charles Volpe, Phil Valentin, Adam Lieberman and James Buschle are jointly and severally liable for and shall pay to the Claimant, Donald G. Wilson, the sum of \$25,000.00 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments and pleadings presented by the parties and determined that authority existed for an award of attorneys' fees to the Claimant;
4. All remaining claims are dismissed with prejudice and denied in the entirety;
5. Any remaining costs of arbitration, including attorneys' fees, shall be borne by the party incurring the cost, except for those specifically enumerated herein; and
6. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to NASD Arbitration Rule 10333, Respondent Sterling Foster & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$200.00 as a

member surcharge.

FORUM FEES

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) pre-hearing conferences x \$300.00 per conference = \$600.00; Four (4) hearing sessions x \$750.00 per session = \$3,000.00; Total forum fees due = \$3,600.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 claim filing fee and, as forum fees, the \$750.00 hearing session deposit paid by Claimant Donald G. Wilson. Respondents Sterling Foster & Co., Inc., Charles Volpe, Phil Valentin, Adam Lieberman and James Buschle are jointly and severally liable for and shall pay to the Claimant, Donald G. Wilson, the sum of \$950.00 as reimbursement of the filing fee and forum fee paid by the Claimant. In addition, Respondents Sterling Foster & Co., Inc., Charles Volpe, Phil Valentin, Adam Lieberman and James Buschle are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$2,850.00 as forum fees.

Concurring Arbitrators' Signatures
Name

Date

/s/ William J. Cooney, Esq.
William J. Cooney, Esq.
Public Arbitrator
Chairperson

March 4, 1998

/s/ Peter Ordower, Esq.
Peter Ordower, Esq.
Public Arbitrator

March 13, 1998

/s/ Carmen P. Michelotti
Carmen P. Michelotti
Industry Arbitrator

March 5, 1998

For ODR Use Only/Date of Decision: March 18, 1998