

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

James D. Wannigman and Melissa J. Wannigman

96-04913

Name of Respondents

Sterling Foster & Co., Inc.
Michael Sabato

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on November 4, 1996, claimants James D. Wannigman and Melissa J. Wannigman, by James D. Wannigman ("claimant"), who appeared Pro Se, alleged that in late July 1996 he began receiving calls from Michael Sabato ("Sabato"), an Account Executive at Sterling Foster & Co., Inc. ("Sterling Foster"). Claimant further alleged that the conversation involved Initial Public Offerings ("IPO") and since he was familiar with IPOs and the potential investment opportunities, he agreed to consider looking at selected investments. Claimant also alleged that on August 9, 1995 he purchased what he believed to be an IPO - 200 shares of Arcadian Corp. at \$16 3/4 per share. Claimant asserted that he inquired about the prospectus and was told by Sabato that it would be forwarded to him by the clearing company. Claimant further asserted that prior to receiving the prospectus, he sold his Arcadian Corp. stock for \$4,328.00 on November 13, 1995. Claimant also asserted that he had a difficult time getting Sabato to sell the stock.

Claimant alleged that Sabato offered another IPO and on August 24, 1996 he purchased 1,000 shares of Com/Tech Communications at \$9 3/4 per share. Claimant further alleged that he inquired about the prospectus and finally received it in December 1995 after he threatened to report Sabato and his firm to NASD. Claimant also alleged that when he reviewed the prospectus he realized that he had not purchased an IPO but shares in a secondary offering. Claimant asserted that when he confronted Sabato about the purchase he was told that he was not "a significant enough" investor to be considered for an IPO at his firm. Claimant further asserted that he discontinued the relationship with Sabato after he denied offering the Arcadian Corp. stock as an IPO. Claimant alleged that on July 11, 1996 he received a call from Paul Finney of Sterling Foster informed him that he was now handling his account and offered him another investment opportunity. Claimant further alleged that he

declined to do further business with Sterling Foster and requested that his shares be issued to him. Claimant averred that he owns 1,000 shares of Com/Tech Communications with a current bid price of \$1 1/2 per share. Claimant contended that Sabato engaged in pressure tactics to induce him to purchase the stock and that he and Sterling Foster are liable for misleading him into making a purchase which was not an IPO.

Respondents Sterling Foster and Sabato, through their in-house counsel John N. Camperlango maintained that Sabato first contacted claimant in June 1995, discussed some investing ideas with him and with his consent, sent him information about the firm and about investment opportunities offered by the firm. Respondents further maintained that claimant's account was approved for trading on August 2, 1995 and on August 4, 1995 Sabato recommended the purchase of Arcadian Corp. Respondents also maintained that Sabato denied ever offering claimant Arcadian Corp. as an IPO. Respondents asserted that Sabato offered the stock as soon as it became available on the secondary market, which explained why the prospectus was not readily available. Respondents further asserted that Sabato never balked at selling Arcadian Corp. stock but told claimant that he believed in the financial strength of the company.

Respondents maintained that in August 1995 Sabato recommended that claimant purchase a new issue Com/Tech Communications. Respondents also maintained that Com/Tech Communications was again, a secondary market purchase and that no prospectus was provided as there was no secondary market prospectus requirement. Respondents also maintained that claimant only complained about "high pressure" tactics after the publication of a news article and in order to blame Sabato for the decline in the value of his security. Respondents contended that claimant received recommendations on two securities which were suitable. Respondents further contended that they cannot be guarantors of the market and that the losses sustained by claimant are attributable to market conditions and his own investment decisions.

RELIEF REQUESTED

Claimants James D. Wannigman and Melissa J. Wannigman requested full reimbursement of \$9,762.00 and indicated that the stock certificates will be returned to Sterling Foster.

Respondents Sterling Foster & Co., Inc. and Michael Sabato requested that claimant's claim be denied and dismissed in its entirety and that all costs associated with the defense of this claim, including the filing charges, be assessed against claimant.

AWARD


Pursuant to Rule 10302 of NASD Code of Arbitration Procedure, a single Public Arbitrator, D. Randall Blohn, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants James D. Wannigman and Melissa J. Wannigman on October 30, 1996 and by respondents Sterling Foster & Co., Inc. and Michael Sabato on December 30, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Sterling Foster & Co., Inc. and Michael Sabato are jointly and severally liable and shall pay to the claimants James D. Wannigman and Melissa J. Wannigman \$5,000.00 in actual damages.
2. Respondents Sterling Foster & Co., Inc. and Michael Sabato are jointly and severally liable and shall pay to claimants James D. Wannigman and Melissa J. Wannigman interest at the rate of 5% per annum from July 9, 1996 to the date of the award.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimants James D. Wannigman and Melissa J. Wannigman shall be retained by NASD Regulation, Inc. Respondents Sterling Foster & Co., Inc. and Michael Sabato are jointly and severally liable and shall pay to the claimants \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, **D. Randall Blohm**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

Date of Decision: June 5, 1997