

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Robert H. Wink,

Claimant,

v.

No. 96-04952

Sterling Foster & Co., Inc.,

Noel Belmonte,

Timothy J. Matthews,

Robert Pratt,

Steven K. Gourlay, Jr.

Cary Licostie,

Adam R. Lieberman,

Craig Kellerman,

Frank J. Monroig,

Andrew E. Reegen,

Brian P. Kearney,

Vincent P. Carrella,

Vincent G. Vaccaro,

Michael H. Cohn,

Diana Shtainer,

William E. Scuteri,

Robert J. Paulson,

Joseph J. Ferranti, and

Claudia L. Silver,

Respondents.

REPRESENTATION OF PARTIES

Claimant Robert H. Wink ("Claimant") was represented by Anthony V. Trogan, Esq. of Weisman, Trogan, Young & Schloss, P.C. located in Bingham Farms, Michigan.

Respondents Noel Belmonte ("Belmonte"), Timothy J. Matthews ("Matthews"), Robert Pratt ("Pratt"), Craig Kellerman ("Kellerman"), and Frank J. Monroig ("Monroig") appeared pro se. These Respondents were previously represented by Joseph D'Elia, Esq. and Gregory M. Curley, Esq. of Law Offices of Joseph D'Elia located in Huntington, New York and Leslie K. Case, Esq. of Gersten, Savage, Kaplowitz, Fredericks & Curtin, LLP located in New York, New York.

Respondent Steven K. Gourlay, Jr. ("Gourlay") was represented by Benedict L. Sliney, Esq. of Tinari, Paar, O'Connell, Osborn & Sliney, LLP located in Mineola, New York. Respondent Gourlay was previously represented by Joseph D'Elia, Esq. and Gregory M. Curley, Esq. of Law Offices of Joseph D'Elia located in Huntington, New York and Leslie K. Case, Esq. of Gersten, Savage, Kaplowitz, Fredericks & Curtin, LLP located in New York, New York.

Respondents Sterling Foster & Company, Inc. ("Sterling Foster"), Adam R. Lieberman ("Lieberman"), Cary Licostie ("Licostie"), Andrew E. Reegen ("Reegen"), Brian P. Kearney ("Kearney"), Vincent P. Carrella ("Carrella"), Vincent G. Vaccaro ("Vaccaro"), Michael H. Cohn ("Cohn"), Diana Shtainer ("Shtainer"), William E. Scuteri ("Scuteri"), Robert J. Paulson ("Paulson"), Joseph J. Ferranti ("Ferranti"), and Claudia L. Silver ("Silver") were represented by Joseph D'Elia, Esq. and Gregory M. Curley, Esq. of Law Offices of Joseph D'Elia located in Huntington, New York. These Respondents were previously represented by Leslie K. Case, Esq. of Gersten, Savage, Kaplowitz, Fredericks & Curtin, LLP located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about November 7, 1996.

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

The Amended Statement of Claim was filed on or about November 21, 1996.

Claimant's First Amended Statement of Claim was filed on or about August 8, 1997.

Respondents' Motion for a More Definite Statement was filed on or about January 28, 1997.

Respondents' Response to First Amended Statement of Claim was filed on or about September 10, 1997.

Respondents did not file properly executed Submission Agreements.

HEARING INFORMATION

The pre-hearing discovery conferences were held on August 1, 1997 for one (1) session; August 15, 1997 for one (1) session; and August 19, 1997 for one (1) session.

The hearing was held on: September 2, 1997 for one (1) session; September 16, 1997 for one (1) session; April 20, 1998 for one (1) session; and October 6, 1998 for two (2) sessions.

The hearing location was Southfield, Michigan.

CASE SUMMARY

Claimant alleged that, prior to the events in question, he had little investment experience, although he had maintained other investment accounts. Claimant contended that Respondent Sterling Foster was a broker/dealer located in New York. Claimant asserted that Respondents Belmonte, Matthews, Pratt, Gourlay, Licostie, Lieberman, Kellerman, Monroig, Reegen, Kearney, Carrella, Vaccaro, Cohn, Shtainer, Scuteri, Paulson, Ferranti, and Silver (collectively referred to as "Respondents") were all employees and agents of Sterling Foster in the common enterprise of selling the products and services of Sterling Foster to the public.

Claimant maintained that he was contacted by Respondents in a cold call and asked to open a securities account with Sterling Foster. Claimant alleged that Respondents persuaded him to purchase the following unsuitable securities: Medimune; Com/Tech Communications; Lasersight; Advanced Voice Technology Warrants; and Acclaim Enterprises. Claimant contended that all of the foregoing were chosen from a group of stocks for which Sterling Foster was acting as principal and for which they were underwriters and market makers and for which Respondents effectively controlled the price. Claimant asserted that Respondents dominated and controlled the market trading in these securities to establish arbitrary and inflated prices. Claimant maintained that he was never told of the true risks associated with ownership of these securities, or of the plan and scheme to control prices which Respondents had undertaken. Claimant also contended that Respondents failed to execute his order to sell his securities. Claimant further asserted that the sale of Claimant's securities, when they occurred, were at prices which were falsely represented to be fair market prices. Claimant maintained that Respondents have been charged by the NASD Enforcement Division with similar misconduct. Claimant alleged that he has lost more than \$137,000 as the result of Respondents' wrongdoing.

Respondents alleged that Claimant has failed to distinguish among the eighteen named Respondents, wrongly lumping them together as one monolithic whole, which is not the case. Respondents contended that the claim fails to state the relationship each Respondent allegedly had with Claimant's account or even specific allegations of wrongdoing. Respondents asserted that Claimant failed to provide details of the alleged conspiracy, each Respondents' alleged role in the conspiracy, or how the alleged conspiracy affected Claimant's account. Respondents maintained that Claimant concedes in the Amended Statement of Claim that Respondents Carrella, Vaccaro, Cohn, Shtainer, Scuteri, Paulson, Ferranti, and Silver had no actual responsibility for Claimant's account. Respondents contended that Claimant's generalized, non-specific allegations fall short of informing Respondents of the claims against them with sufficient clarity to enable them to answer.

RELIEF REQUESTED

Claimant requested: \$137,000 as out-of-pocket loss; interest at 12%; costs; attorney fees;

exemplary and punitive damages; additional damages; and rescission of all transactions.

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

Claimant requested early exclusion from the class action involving Sterling Foster and others pending in the United States District Court for the Eastern District of New York.

Claimant voluntarily withdrew all claims against Respondent Reegen.

Prior to the hearing on the merits, the panel dismissed Respondents Kearney, Carrella, Vaccaro, Cohn, Shtainer, Scuteri, Paulson, Ferranti, and Silver, with prejudice.

At the close of Claimant's case, the panel dismissed all claims against Respondent Belmonte with prejudice.

Respondent Gourlay and Matthews' Motion to Re-Open Hearing in Accordance with Rule 10329 of the NASD Code of Arbitration Procedure (the "Code") was granted.

Respondents Kellerman and Pratt have filed for protection pursuant to Chapter 7 of the United States Bankruptcy Code, and therefore Claimant was unable to proceed against these Respondents in accordance with the Automatic Stay.

Respondents Sterling Foster, Belmonte, Matthews, Gourlay, Licostie, Lieberman, and Monroig did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed Submission Agreement but are required to submit to arbitration pursuant to Rule 10301 of the Code, and having answered the claim and having appeared in this matter, are bound by the determination of the arbitration panel on all issues submitted.

Respondents Sterling Foster, Lieberman, Monroig, Matthews, and Licostie did not appear at the hearing. After reviewing the record, the undersigned arbitrators have determined that these Respondents have received due notice of the hearing as required under Rule 10315 of the Code, and that arbitration of this matter would proceed pursuant to Rule 10318 of the Code.

The parties who appeared 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 Respondents Sterling Foster & Company, Inc. and Adam R. Lieberman are jointly and severally liable for and shall pay to Claimant Robert H. Wink the sum of Eighty Thousand Dollars and No Cents (\$80,000.00), plus interest at 12% from the date of this award;
- (2) That Respondents Frank J. Monroig and Timothy J. Matthews are jointly and severally liable for and shall pay to Claimant Robert H. Wink the sum of Thirty Thousand Dollars and No Cents (\$30,000.00);
- (3) That Respondent Cary Licostie is liable for and shall pay to Claimant Robert H. Wink the sum of Five Thousand Dollars and No Cents (\$5,000.00);
- (4) That any money collected from Respondents Frank J. Monroig, Timothy J. Matthews, or Cary Licostie shall be deducted from the sum of Eighty Thousand Dollars and No Cents (\$80,000.00) jointly and severally assessed against Respondents Sterling Foster & Company, Inc. and Adam R. Lieberman;
- (5) That all claims against Respondent Steven K. Gourlay, Jr. are hereby dismissed in their entirety with prejudice;
- (6) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (7) That any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) hearing sessions x \$750 = \$3,750 in forum fees. There were three (3) pre-hearing sessions x \$300 = \$900 in forum fees. Total forum fees = \$4,650. Pursuant to Rule 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited by the Claimant.

Pursuant to Rule 10332(c) of the Code, Respondents Sterling Foster, Lieberman, Monroig, Matthews, and Licostie are jointly and severally liable for and shall pay all forum fees in the amount of \$4,650.

Pursuant to Rule 10333 of the Code, Respondent Sterling Foster shall pay to NASD Regulation, Inc. the \$350 past due member surcharge previously invoiced.

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

Concurring Arbitrators' Signatures:

\s\ Frederick P. Kessler
Hon. Frederick P. Kessler
Chairperson
Public Arbitrator

November 2, 1998
Dated:

\s\ Hugh R. Kennedy
Hugh R. Kennedy
Panelist
Public Arbitrator

November 2, 1998
Dated:

\s\ John G. Martin
John G. Martin
Panelist
Industry Arbitrator

October 31, 1998
Dated:

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

November 6, 1998