

NASD REGULATION, INC. AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Hansel M. DeBartolo;
H.M. DeBartolo, Jr. MDSC Pension Plan & Trust

96-05261

Name of Respondents

Tucker Anthony Incorporated; and
Patrick Yun

REPRESENTATION

For Claimants: Hansel M. DeBartolo ("DeBartolo") and the H.M. DeBartolo, Jr. MDSC Pension Plan & Trust ("Trust") were represented by Paul J. Sussman, Esq. of Chicago, Illinois.

For Respondents: Tucker Anthony Incorporated ("Tucker") and Patrick Yun ("Yun") were represented by Patrick J. Howley, Esq. of Tucker Anthony Incorporated, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: November 26, 1996.

Claimant's Submission Agreement signed on: November 22, 1996.

Statement of Answer and Motion to Dismiss filed by Respondents on: April 14, 1997.
Respondents did not file executed Submission Agreements.

Claimants' Response to Motion to Dismiss filed on: May 19, 1997.

HEARING INFORMATION

Pre-Hearing Conference: August 13, 1997 for One (1) session before One (1) arbitrator;
October 23, 1997 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: October 28, 1997 for Two (2) sessions;
October 29, 1997 for Two (2) sessions; and

Hearing Location: October 30, 1997 for One (1) session.
Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondent Yun, while employed by or acting as an agent for Respondent Tucker, engaged in acts to defraud DeBartolo and the Trust, including misrepresentation of the status of the accounts, excessive and unauthorized trading, and all with the knowledge of the management of Tucker Anthony. The Claimants specifically alleged that:

1. As part of Respondents' fraudulent scheme, they recommended to Claimants "Beacon Accounts", described as special, highly conservative accounts which provided special brokerage services. Respondents contended that no commissions were paid (just an annual fee) and the account was non-discretionary;
2. Instead, excessive and substantial commissions were charged on each trade, but not shown on the customer's statements. In addition, Respondents made the great majority of investment decisions and failed to contact Claimants prior to entering the transaction;
3. Furthermore, the accounts were churned and highly speculative securities were purchased in the accounts, often in securities in which Tucker Anthony made a market.

Based upon the above allegations, Claimants asserted claims for violation of the State and Federal Securities Acts; common law fraud; breach of fiduciary duty; violation of the Illinois Deceptive Business Practice Act; and violation of the RICO act. In addition, Claimant asserted Tucker Anthony was liable under respondeat superior.

Respondents denied the material allegations of the statement of claim, alleging that Claimant DeBartolo signed documentation when the accounts were open that represented he was responsible for all investment decisions and their consequences, and that Tucker Anthony would be held liable for any decisions. In addition, Respondents asserted that DeBartolo was a sophisticated, experienced investor who had maintained accounts at more than 20 brokerage houses and understood the risks associated with an aggressive trading strategy. All fees, including any mark-ups over the annual account fee were explained to DeBartolo. Yun did not exercise discretion over any trade, with the exception of limited time and price discretion. Furthermore, DeBartolo never complained about the accounts

and even maintained accounts at Tucker Anthony at the time of the Answer. Respondents also asserted numerous affirmative defenses.

RELIEF REQUESTED

Claimants requested entry of an award for approximately \$133,189.00 in compensatory damages; treble damages; \$350,000.00 in punitive damages; interest at the legal rate; forum fees; attorneys' fees; costs; and other just relief.

Respondents requested that the claims be dismissed and that costs be charged to Claimant.

OTHER ISSUES CONSIDERED & DECIDED

On September 18, 1997, the panel decided the Respondents' Motion to Dismiss, ruling that the Motion would be held under advisement and considered with the hearing on the facts.

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. The Statement of Claim is dismissed with prejudice and denied in the entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein;
3. The undersigned arbitrators hereby order the expungement of this arbitration case from the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. for the record of Patrick Yun (CRD number 2287987); and

4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Section 10333 of the Code of Arbitration Procedure, Respondent Tucker Anthony Incorporated is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge in the sum of \$500.00.

FORUM FEES

Pursuant to Section 10332[©] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) pre-hearing conferences with One (1) arbitrator x \$300.00 per conference = \$600.00; Five (5) sessions x \$1,000.00 per session = \$5,000.00; Total forum fees = \$5,600.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$250.00 non-refundable claim filing fee and, as forum fees, the \$1,000.00 hearing session deposit previously paid by the Claimants. In addition, Claimants Hansel M. DeBartolo and the H.M. DeBartolo, Jr. MDSC Pension Plan & Trust are liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$1,800.00 as additional forum fees. Furthermore, Respondents Tucker Anthony Incorporated and Patrick Yun are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$2,800.00 as forum fees.

Concurring Arbitrators' Signatures

Name

Date

/s/ G. Gale Roberson, Jr., Esq.

March 26, 1998

G. Gale Roberson, Jr., Esq.

Public Arbitrator

Chairperson

/s/ Susanne J. Hollander

March 30, 1998

Susanne J. Hollander

Public Arbitrator

/s/ Michael E. Rogers

March 25, 1998

Michael E. Rogers

Industry Arbitrator

For ODR Use Only/Date of Decision: April 7, 1998