

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Tiburon, Inc.

96-05320

Names of Respondents

Euro-Atlantic Securities, Inc.
Michael Payne

REPRESENTATION

For Claimant: Rolf M. Baghdady, P.A., Columbia, South Carolina.

For Respondent Euro-Atlantic Securities, Inc. ("Euro-Atlantic"): Michael H. Ference, Esq. of the law firm of Lampert & Lampert, Esqs., New York, New York until his withdrawal on or about April 1, 1997. Thereafter, Euro-Atlantic Securities, Inc. appeared pro se.

Respondent Michael Payne appeared pro se.

CASE INFORMATION

Statement of Claim filed: November 29, 1996.

Amended Statement of Claim filed: November 20, 1997.

Claimant's Submission Agreements signed: November 27, 1996 and February 2, 1998.

Statement of Answer filed by Respondent Euro-Atlantic Securities, Inc.: January 23, 1997.

Respondent Euro-Atlantic Securities, Inc.'s Submission Agreement signed: January 22, 1997.

Respondent Payne did not file an executed Submission Agreement or a Statement of Answer.

HEARING INFORMATION

One hearing session was conducted in this matter on March 26, 1998 in Atlanta, Georgia and a telephonic hearing was conducted on April 16, 1998.

CASE SUMMARY

Claimant alleged that the Respondent broker, Michael J. Payne, solicited and confirmed through Euro-Atlantic the purchase of 7,500 warrants of Multimedia Concepts, Inc. (MMCIW) at \$225.00 per warrant at a total cost of \$16,896.50.

Claimant next alleged Respondent Payne confirmed a sale at \$3.50 net for the warrants on August 20, 1996 at 10:45 a.m. and that Tiburon had a profit of \$9,375.00.

Claimant asserted Tiburon, Inc. made repeated requests and was promised that it would be paid \$31,924.49, but in reality, ultimately only the \$5,713.64 cash balance and \$6,072.25 proceeds of the sale at an unauthorized .8125 per warrant were paid, thus leaving a balance due of \$20,177.75.

Respondent Euro-Atlantic Securities, Inc. maintained that it acted responsibly and properly with respect to Claimant and denied any and all liability claimed by Claimant from alleged failure to sell or in any other manner in connection with the transactions effected for or through Claimant's account. Respondent Euro-Atlantic Securities, Inc. asserted that it properly discharged its duties, responsibilities and obligations and in all respects acted in accordance with applicable law as well as accepted industry standards and practices.

RELIEF REQUESTED

Claimant requested damages in the sum of \$20,177.75 plus interest, costs, attorneys' fees and punitive damages under federal and state law.

Respondent Euro-Atlantic Securities, Inc. requested a dismissal of all claims in their entirety and that all arbitration fees, costs and attorneys' fees be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The party present at the hearing 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 party present at the hearing agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD Regulation, Inc., Office of Dispute Resolution.

The claim was amended to include Michael Payne as a Respondent, and he was served with the Statement of Claim, Amended Statement of Claim, Respondent Euro-Atlantic Securities, Inc.'s Statement of Answer, notice of the hearing and the identity of the arbitrators and did not participate either at the first hearing of the arbitrators, at which time Claimant produced its evidence, or at a second telephonic hearing.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators determined that Respondent Payne was properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondent Payne received due notice of the hearings as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Payne did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondents are liable, jointly and severally, and shall pay to the Claimant the sum of \$20,177.75, inclusive of pre-judgment interest, representing actual damages.

2. The Respondents are liable, jointly and severally, and shall pay to the Claimant the sum of \$4,496.43 representing attorneys' fees pursuant to the decision of the Supreme Court in Mastrobuono v. Shearson Lehman Hutton, Inc. 514 U.S. 52, 131 L. Ed. 2d 76, 115 S. Ct. 1212 (1995).

3. The Respondent Euro-Atlantic Securities, Inc. is liable and shall pay to the Claimant the sum of \$60,000.00 representing punitive damages pursuant to Mastrobuono, supra.

4. The Respondent Michael Payne is liable and shall pay to the Claimant the sum of \$1,000.00 representing punitive damages pursuant to Mastrobuono, supra.

5. The Respondents are liable, jointly and severally, and shall pay to the Claimant the sum of \$520.00 representing reimbursement of the claim filing fee and hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$800.00 (two sessions x \$400.00) are assessed as follows:

Respondents are assessed, jointly and severally, the sum of \$800.00.

Respondent Euro-Atlantic Securities, Inc. is assessed the sum of \$200.00 representing the member surcharge pursuant to Rule 10333 of the Code.

NASD Regulation, Inc. shall retain the \$400.00 previously paid by the Claimant representing the adjournment fee for the hearing scheduled for June 30, 1998.

Claimant is assessed the sum of \$800.00 representing the adjournment fee for the hearing scheduled for September 15, 1998 less the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$400.00.

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

Concurring Arbitrators' Signatures

Name

/S/

Public/Industry

Public

Joel Arogeti, Esq.

/S/

Public

William B. Brown, Esq.

/S/

Industry

Chesley V. Morton, Jr.

Date of Decision: May 8, 1998