

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

John J. Collins, and  
Stella A. Collins,

Claimants,

v.

No. 96-05360

Rodecker and Company, and  
Martin Gurney,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants John J. Collins and Stella A. Collins ("Claimants") were represented by Laurence S. Schultz, Esq. of Driggers, Schultz & Herbst located in Troy, Michigan.

Respondents Rodecker and Company and Martin Gurney ("Respondents") were represented by Charles E. Murphy, Esq. and Adam Levitsky, Esq. of Cox, Hodgman & Giarmarco located in Troy, Michigan.

### **CASE INFORMATION**

The Statement of Claim was filed on or about November 27, 1996.

Claimants' Submission Agreement was signed on November 18, 1996.

The Joint Statement of Answer was filed on or about February 12, 1997.

The Submission Agreement of Respondent Rodecker and Company was signed on February 10, 1997.

The Submission Agreement of Respondent Martin Gurney was signed on February 10, 1997.

The Post-Hearing Briefs were filed on or about June 15, 1998.

### **HEARING INFORMATION**

The telephonic pre-hearing conference was held on March 19, 1998 for one (1) session. The hearing was held on June 4, 1998 for two (2) sessions and June 5, 1998 for three (3) sessions. The hearing location was Southfield, Michigan.

### **CASE SUMMARY**

Claimants contended that Respondents sold them 3,100 shares of Eurodisney stock for a total investment of \$52,285.58. Claimants alleged that this highly speculative and risky investment was unsuitable based on their conservative investment objectives and limited investment experience. Claimants asserted that Eurodisney was an untested venture which was poorly financed and over-leveraged. Claimants maintained that the Eurodisney securities were not registered for sale with the Securities and Exchange Commission, nor were they registered for sale in any state in the United States. Claimants alleged that Respondents engaged in fraud and misrepresentation involving their failure to disclose the risks associated with the Eurodisney investment. Claimants maintained that Respondents engaged in a continuum of negligent and/or intentional acts which violated the various federal and state securities laws, statutes, and the rules and regulations of the NASD and NYSE.

Respondents denied all liability in the Statement of Answer. Respondents alleged that Claimants were sophisticated and experienced investors who understood and acknowledged the risks involved with the Eurodisney investment. Respondents asserted that Claimants made their own investment decisions. Respondents contended that Eurodisney was a suitable investment which was consistent with Claimants' expressed investment objectives, risk tolerance, as well as their prior investment history. Respondents maintained that they fully disclosed all risks associated with Eurodisney and that Claimants accepted those risks.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested out-of-pocket-damages in the amount of \$43,845, plus exemplary damages, interest, costs and attorney fees.

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**

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 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, as well as the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) 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
- (3) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) hearing sessions x \$400 = \$2,000 in forum fees. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. Total forum fees = \$2,300. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the

hearing session deposit in the amount of \$400 previously deposited by the Claimants.

Pursuant to §10332(c) of the Code, Claimants are liable for and shall pay forum fees in the amount of \$750 (1/2 forum fees - hearing session deposit).

Pursuant to §10332(c) of the Code, Respondents are liable for and shall pay forum fees in the amount of \$1,150 (1/2 forum fees).

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

Concurring Arbitrators' Signatures:

\s\ Burton L. Ansell, Esq.

Burton L. Ansell, Esq.

Chairperson

Public Arbitrator

June 29, 1998

Dated:

\s\ A. Robert Stevenson, Esq.

A. Robert Stevenson, Esq.

Panelist

Public Arbitrator

June 29, 1998

Dated:

\s\ Timothy S. Rogowski

Timothy S. Rogowski

Panelist

Industry Arbitrator

June 29, 1998

Dated:

For NASD Regulation use only:

Date award served on parties: July 7, 1998