

## ARBITRATION AWARD

### NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Richard Rubinowicz & Eva Rubinowicz

RECEIVED  
NATIONAL ASSOCIATION  
OF SECURITIES REGULATION  
MAR 18 1998  
ADMIN.

96-05366

Name of Respondents

Sterling Foster & Co., Inc.;  
Michael MacCaull; and  
Adam Richard Lieberman

### REPRESENTATION

For Claimants: Richard Rubinowicz & Eva Rubinowicz ("Rubinowicz") were represented by Andrew B. David, Esq. and Charles A. Valente, Esq. of Sugar, Friedberg & Felsenthal, located in Chicago, Illinois.

For Respondents: Sterling Foster & Co., Inc. ("Sterling Foster") and Adam Richard Lieberman ("Lieberman") were represented by Justin I. Sacca, Esq. and Gregory M. Curley, Esq., of the Law Offices of Joseph D'Elia, located in Huntington, New York. Respondent Michael MacCaull ("MacCaull") settled with Claimants prior to hearing.

### CASE INFORMATION

Statement of Claim filed: December 3, 1996.

Claimant Richard Rubinowicz's Submission Agreement signed on: November 25, 1996.

Claimant Eva Rubinowicz's Submission Agreement signed on: February 12, 1997.

Claimants' Amended Statement of Claim filed on: February 12, 1997.

Second Amended Statement of Claim (naming Lieberman individually) filed: June 17, 1997.

Statement of Answer filed by Respondents Sterling Foster and MacCaull on: April 8, 1997.

Respondent Sterling Foster's Submission Agreement signed on: April 8, 1997 by Adam Lieberman, President/CEO, Sterling Foster & Co., Inc.

Respondent MacCaull's Submission Agreement signed on: April 9, 1997.

Respondent Lieberman did not file an executed submission agreement or a Statement of Answer.

### HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: August 27, 1997 for Two (2) sessions;

August 28, 1997 for One (1) session;

September 17, 1997 for One (1) session; and  
February 12, 1998 for One (1) session.

Hearing Location: Chicago, Illinois.

#### **CASE SUMMARY**

Claimants alleged that Respondents induced the purchase of several IPOs or newly issued stocks by misrepresenting or omitting material facts regarding the risks and quality of the investments. Based upon the allegations of the Statement of Claim, the Claimants asserted claims for securities fraud under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; common law fraud; breach of fiduciary duty; and violation of the Tennessee securities laws. In addition, Claimants alleged that Sterling Foster was liable as a knowing participant and under the doctrine of respondeat superior. Further, Claimant asserted that Lieberman was liable as a knowing participant and as a control person under the federal securities laws.

Respondents Sterling Foster and MacCaull denied the material allegations of the Claims, alleging that Mr. Rubinowicz was an experienced investor who expressed his desire to invest aggressively and who was advised of all the risks of the investments made prior to his purchases of the stocks. They further alleged that any losses were the result of unfavorable market factors. In addition, the Answer asserted several affirmative defenses.

#### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondents for actual damages in an amount to be determined by the arbitrators, but in excess of \$500,000.00; punitive damages, interest, the costs of arbitration and claimants' legal fees.

Respondents Sterling Foster and MacCaull requested that the Statement of Claim be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Lieberman did not file an executed submission agreement, but is required to submit to arbitration pursuant to NASD Arbitration Rule 10301.

On June 17, 1997, Claimant filed a Motion to Amend. After review of the Motion and all subsequent pleadings relating to the Motion, the panel determined on July 21, 1997 that the Motion was granted.

By letter dated October 31, 1997, the Claimants informed the Office of Dispute Resolution that they settled their claims against Respondent MacCaull.

Respondents Sterling Foster and Lieberman did not appear at hearing. Pursuant to NASD Arbitration

Rule 10318, the panel determined that Respondents received due notice of the hearing and that the arbitration would proceed. On February 12, 1998, after the hearing concluded, Respondent Lieberman filed a motion to postpone. The panel reviewed the Motion and determined that it would be denied.

### 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. Respondents Sterling Foster & Co., Inc. And Adam Lieberman are jointly and severally liable for and shall pay to the Claimants, Richard Rubinowicz and Eva Rubinowicz, the sum of \$715,024.00 as compensatory damages, plus interest to February 12, 1998 in the amount of \$140,000.00;
2. In addition, Respondents Stirling Foster & Co., Inc. and Adam Lieberman are jointly and severally liable for and shall pay to the Claimants, Richard Rubinowicz and Eva Rubinowicz, the sum of \$1,500,000.00 as punitive damages. In deciding to award punitive damages, the panel considered the arguments and pleadings presented by the parties, as well as the fraud committed by Respondents, and determined that authority existed for an award of punitive damages to the Claimants;
3. In addition, Respondents Stirling Foster & Co., Inc. and Adam Lieberman are jointly and severally liable for and shall pay to the Claimants, Richard Rubinowicz and Eva Rubinowicz, the sum of \$50,000.00 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments, pleadings and the Tennessee statutes presented by the parties and determined that authority existed for an award of attorneys' fees to the Claimants;
4. Any remaining costs of arbitration, including additional attorneys' fees, shall be borne by the party incurring the cost, except for those specifically enumerated herein; and
5. Any relief not specifically awarded is hereby denied.

### OTHER COSTS

Pursuant to NASD Arbitration Rule 10333, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$350.00 member surcharge paid by Respondent Sterling Foster. In addition, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$600.00 postponement fee paid by Respondent Sterling Foster.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$600.00 postponement fee paid by Respondent MacCaull. The NASD Regulation, Inc., Office of Dispute Resolution shall refund the \$400.00 excess deposit to Respondent Michael MacCaull.

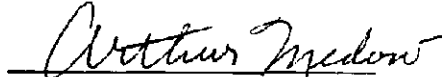
**FORUM FEES**

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Five (5) hearing sessions x \$600.00 per session = \$3,000.00.


The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$250.00 non-refundable filing fee and refund the \$600.00 hearing session deposit and the \$400.00 over payment paid by the Claimants, Richard Rubinowicz and Eva Rubinowicz. Respondents Stirling Foster & Co., Inc. and Adam Lieberman are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$3,000.00 as forum fees. The remaining \$50.00 on deposit from Sterling Foster shall be applied to the forum fees due, leaving the balance due of \$2950.00.

Concurring Arbitrators' Signatures  
Name

Date

  
Arthur Medow, Esq.  
Public Arbitrator  
Chairperson

3-4-98

  
Harry L. Sheehy  
Public Arbitrator

3/14/98

  
Mark E. Larson, Jr., Esq.  
Industry Arbitrator

3-8-98

For ODR Use Only/Date of Decision: \_\_\_\_\_