

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

William J. Anderson

96-05795

Name of Respondents

Jeffrey R. Wood
Daniel Porush

REPRESENTATION

For Claimant William J. Anderson ("Claimant"): Charles Bagley, IV, Esq., Bagley & Rhody, Annapolis, MD

Respondents Jeffrey R. Wood ("Wood") and Daniel Porush ("Porush") did not appear.

CASE INFORMATION

Statement of Claim filed: December 27, 1996

Claimant's Submission Agreement signed on: December 26, 1996

Statement of Answer filed by Respondent Porush on: February 20, 1997

Respondent Porush's Submission Agreement signed on: February 20, 1997

Respondent Wood did not file a Statement of Answer or an agreement to arbitrate.

HEARING INFORMATION

Pre-Hearing Conferences: July 15, 1997/one session
September 10, 1997/one session
January 15, 1998/one session
February 4, 1998/one session

Hearing Date/Sessions: April 8, 1998/two sessions

Hearing Location: Doubletree Hotel
Baltimore, MD

CASE SUMMARY

Claimant alleged that Respondents Porush and Wood (collectively "Respondents") violated anti-fraud provisions of Section 15 USC 77q(a) ("Securities Act"), Sections 10(b) and 20(a) of 15 USC 78j(b) and 78t ("Exchange Act"), violations of Rule 10b-5, Section 11-703 of the Maryland Securities Act, Section 901(a) of Title IX of the Organized Crime Control Act of 1970 ("RICO Act"), committed common law

fraud, breached their contractual and fiduciary duties to Claimant, and were negligent in the management of Claimant's account. Claimant asserted he received a cold call from Respondents in March 1993 and opened an account shortly thereafter. Claimant alleged that Respondents misrepresented that they could obtain a 20% return on his investments and that they would return all profits to Claimant. Claimant alleged that Respondents had been informed that his investment objectives were preservation of principal, appreciation of stocks and income.

Claimant alleged that Respondents first persuaded him to authorize the purchase of 100 shares of Nestle following several high pressure telephone calls and misrepresentations. Claimant alleged that Respondents also induced him to authorize the purchase of 2,500 shares of Aquanatural Company as well as warrants, and an initial public offering of 1,000 shares of stock and warrants in Computer Marketplace, Inc. However, Claimant alleged that when he received the confirmation on the Computer Marketplace, Inc. IPO, Respondents had purchased an additional 2,500 shares without authorization of Claimant. Claimant alleged that Respondents used similar high pressure tactics and unauthorized trading, both buying and selling, on shares of Aquanatural Company, Healthcare, Out-Takes, Inc., Master Glazier Karate, MH Myerson & Co., Inc., IDM Environmental Corp., and Child Robotics, Octagon, Inc. As a result of the fraudulent misrepresentations and unauthorized trading, Claimant alleged that he suffered severe financial losses.

Respondent Porush, in the Statement of Answer, denied the allegations of wrong doing as asserted in the Statement of Claim. Porush raised the affirmative defenses of a failure to state a claim against Porush upon which relief can be granted; New York law applies pursuant to the signed customer agreement which precludes attorney's fees absent an express agreement; claims are barred by applicable statutes of limitation; Claimant authorized all transactions; Porush acted in good faith and exercised that degree of care, diligence and skill which ordinary prudent men would exercise in similar circumstances; Porush never dealt directly with Claimant; fraud is not plead with particularity; damages had no causal connection to any act committed by Porush; Claimant did not reasonably rely upon any action or inaction by Porush; Porush had no fiduciary duty to Claimant; assumption of risk; failure to mitigate; no breach of contract; estoppel; waiver; and ratification.

Respondent Wood did not file a Response to the Statement of Claim.

RELIEF REQUESTED

Claimant requested \$150,000.00 in compensatory damages, punitive damages or treble damages, as well as the costs of this arbitration including attorney's fees.

Respondent Porush requested that the Statement of Claim be dismissed and that the costs of this arbitration be assessed against Claimant.

Respondent Wood did not request relief.

OTHER ISSUES CONSIDERED & DECIDED

The parties in attendance 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 parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Upon review of the file and the representations made by Claimant, the undersigned arbitrators have determined that Respondent Wood has been 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 have also determined that Respondents Wood and Porush have received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Wood 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 having been served with the Statement of Claim and notice of the hearing 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Porush is liable to and shall pay to Claimant \$65,000.00 upon the finding of fraud; and
2. That Respondent Porush is liable to and shall pay to Claimant \$10,000.00 in punitive damages also upon the finding of fraud; and
3. That Respondent Porush is liable to and shall pay to Claimant \$10,000.00 in attorney's fees based upon the violation of Maryland Securities Act, Section 11-703; and
4. That the claims against Respondent Wood are denied; and
5. That other than specified in this award and the forum fees section below, all parties are responsible for their own costs and expenses; and
6. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

2 Prehearing Sessions (Single Arbitrator) x \$300.00 =	\$ 600.00
2 Prehearing Sessions (Full Panel) x \$750.00 =	\$1,500.00
2 Hearing Sessions x \$750.00 =	<u>\$1,500.00</u>
Total Forum Fees	\$3,600.00

Forum Fees are assessed one-third to Claimant, one-third to Porush and one-third to Wood.

Claimant shall receive credit for the \$800.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$400.00.

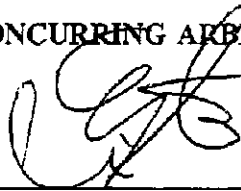
Respondents Porush and Wood each have a forum fees assessment due of \$1,200.00.

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

DATE

4-16-98

CONCURRING ARBITRATORS' SIGNATURES



Marvin Elster, Presiding
Public Arbitrator

Edward B. Myers
Public Arbitrator

John R. Mould
Industry Arbitrator

Date Decision Served by NASD Regulation:

May 13, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

Marvin Elster, Presiding
Public Arbitrator

5/12/98

Edward B. Myers
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Public Arbitrator

John R. Mould
Industry Arbitrator

Date Decision Served by NASD Regulation:

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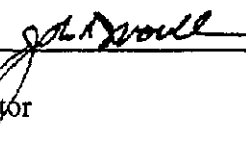
DATE

CONCURRING ARBITRATORS' SIGNATURES

Marvin Elster, Presiding
Public Arbitrator

Edward B. Myers
Public Arbitrator

4/17/98


John R. Mould
Industry Arbitrator

Date Decision Served by NASD Regulation:

May 13, 1998