

**AWARD**

**NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Name of Claimant

James H. Nolin

Names of Respondents

96-05837

Investors Associates, Inc.  
Global Equities Group Inc.  
Mark Moore  
Herman Epstein  
Lawrence Joseph Penna  
Aleksandr Shvarts  
Michael Henry Christ  
Damiano Salvatore Coraci  
Vadim Zeltser  
Aleks Paul  
Steven Z. Hellman  
Wayne Charles Wicheart  
Martin Charles Wegard  
Paul Ellwood Forsythe, III  
Glenn Michael Lanaia  
Alex N. Cherepakhov  
Donna Marie Silverman  
Alfred Pierrepont Reeves, III  
Louis Levine  
Kenneth Edward Sidler  
Arthur Michael Pendrick  
Melvin Stuart Simon  
Jay Gary Hirschhorn  
Evgueni Chichukine  
Calvin Edward Moore

**REPRESENTATION**

For Claimant: John G. Harrell, Esq. and Ron H. Kent, Esq. of the law firm of Bradley, Arant, Rose & White, Birmingham, Alabama.

For Respondent Mark Moore ("Moore"): M. David Sayid, Esq. of the law firm of Sayid and Associates, Hackensack, New Jersey.

For Respondent Investors Associates, Inc. ("Investors"): M. David Sayid, Esq. of the law firm of Sayid and Associates, Hackensack, New Jersey until his withdrawal on or about December 14, 1998. Thereafter, Respondent Investors Associates, Inc. did not appear.

For Respondent Global Equities, Inc. ("Global"): David W. Kenna, Esq. of the law firm of Mound, Cotton & Wollan until his withdrawal on January 7, 1998. Thereafter, Respondent Global Equities Group, Inc. did not appear.

For Respondent Herman Epstein ("Epstein"): Lawrence R. Gelber, Esq., New York, New York.

For Respondent Lawrence Joseph Penna ("Penna"): Lawrence R. Gelber, Esq., New York, New York.

For Respondent Aleksandr Shvarts ("Shvarts"): Cirino M. Bruno, Esq. of the law firm of Gusrac, Kaplan & Bruno, New York, New York.

For Respondent Michael Henry Christ ("Christ"): Cirino M. Bruno, Esq. of the law firm of Gusrac, Kaplan & Bruno, New York, New York.

Respondent Damiano Salvatore Coraci ("Coraci") appeared pro se.

Respondent Vadim Zeltser ("Zeltser") appeared pro se.

For Respondent Aleks Paul ("Paul"): Cirino M. Bruno, Esq. of the law firm of Gusrac, Kaplan & Bruno, New York, New York.

Respondent Steven Z. Hellman ("Hellman") appeared pro se.

Respondent Wayne Charles Wichert ("Wichert") appeared pro se.

Respondent Martin Charles Wegard ("Wegard") appeared pro se.

For Respondent Paul Ellwood Forsythe, III ("Forsythe"): Lawrence R. Gelber, Esq., New York, New York.

For Respondent Glenn Michael Lanala ("Lanala"): Lawrence R. Gelber, Esq., New York, New York.

Respondent Alex N. Cherpakhov ("Cherpakhov") appeared pro se.

Respondent Donna Marie Silverman ("Silverman") appeared pro se.

Respondent Alfred Pierrepont Reeves, III ("Reeves") appeared pro se.

For Respondent Louis Levine ("Levine"): Lawrence R. Gelber, Esq., New York, New York.

For Respondent Kenneth Edward Sidler ("Sidler"): Lawrence R. Gelber, Esq., New York, New York.

Respondent Arthur Michael Pendrick ("Pendrick") appeared pro se.

Respondent Melvin Stuart Simon ("Simon") appeared pro se.

Respondent Jay Gary Hirschhorn ("Hirschhorn") appeared pro se.

Respondent Evgueni Chitchev ("Chitchev") appeared pro se.

Respondent Calvin Edward Moore Jr. ("C. Moore") appeared pro se.

#### CASE INFORMATION

Statement of Claim filed on: December 30, 1996.

Amended Statement of Claim filed on: April 24, 1998.

Amended Statement of Claim filed on: June 10, 1998.

Claimant's letter brief in response to Respondent Reeve's Motion to Dismiss filed on: June 4, 1998.

Claimant's Brief in Opposition to the Motion to Dismiss of Respondents Epstein, Penna, Forsythe, Levine, Lanala and Sidler filed on: May 29, 1998.

Claimant's Submission Agreement signed on: December 30, 1998.

Statement of Answer filed by Respondents Michael Christ and Aleksandr Shvarts on: May 27, 1998.

Statement of Answer filed by Respondents Mark Moore and Investors Associates, Inc. on: February 23, 1997.

Statement of Answer filed by Respondent Global Equities Group, Inc. on: January 31, 1997.

Amended Statement of Answer filed by Respondent Global Equities Group, Inc. on: May 21, 1997.

Respondent Global Equities Group, Inc.'s Submission Agreement signed on: January 30, 1997.

Motion to Dismiss filed by Respondents Epstein, Penna, Forsythe, Lanala, Sidler and Levine on: May 4, 1998.

Motion to Dismiss filed by Respondent Reeves on: May 27, 1998.

### HEARING INFORMATION

A pre-hearing conference was conducted on September 29, 1997, with the arbitration panel. In addition, six hearing sessions were conducted in this matter on December 14, 15, and 16, 1998, in Atlanta, Georgia.

### CASE SUMMARY

Claimant alleged the following:

In October, 1994, he received a "cold call" from Mark Moore, then associated with Investors Associates, Inc. Claimant indicated to Moore that at the time he was 57 years old, had assets worth approximately \$350,000.00 to \$400,000.00, and had a yearly income of \$60,000.00. Claimant told Moore that he had just lost \$1,300.00 on an investment in EuroDisney bonds and was skeptical of investing. Moore represented that he could greatly increase Claimant's money in a short period of time; he had access to critical information of which other brokers were unaware; and, he had access to "inside" information. Claimant had little investment experience and was otherwise an unsophisticated investor.

Claimant purchased 3,000 Transworld Home Health Care, Inc. warrants on or about October 18, 1994, with an expiration date of December 6, 1997. The warrants were sold in November, 1994 at a profit. Moore promised that no commission would be charged on this investment, as well as later investments Claimant would make.

Claimant was convinced by Moore to purchase 10,000 Chromatics Color Sciences International (CCSI) warrants on November 23, 1994. Thereafter, Moore convinced him to purchase 6,650 Senior Tour Players (SRTR) warrants, and later an additional 20,000 Senior Tour Players warrants.

In December, 1994, Moore contacted him about investing in either an IPO or warrants of American Bingo Gaming Corp. (BNGO). At this time Claimant had a paper loss in his other investments with Moore. Claimant alleged that Moore made an unauthorized purchase of BNGO warrants for \$15,016.75 in Claimant's account. Claimant received notices of an unpaid balance and requested that the BNGO warrants trade be canceled. Moore did cancel the trade. Moore convinced him in January, 1995 to reinstate the canceled trade at the price of the original trade. Claimant alleged that Moore convinced him that the BNGO warrants would recoup his other losses.

In mid February, 1995, Moore contacted Claimant in an attempt to convince him to purchase LICON International (LCON), a company with a history of financial problems. Moore represented that he had purchased LCON; he had access to inside information; and, Claimant should come up with the money to invest in LCON any way he could. Moore further represented the investment to

be a safe and suitable investment and Moore again represented that he would receive no commission. Claimant alleged that he informed Moore that he had no means to purchase the investment except to take out a home equity loan.

Claimant alleged that Moore purchased 40,000 shares of LCON for his account on February 27, 1995, and that this was an unauthorized trade. Moore convinced him, after Claimant received a deficiency notice, to pay for the shares even though Claimant had to draw on the home equity line. On or about March 8, 1995, Moore allegedly convinced Claimant to sell the SRTR warrants at a loss.

Moore changed employers from Investors Associates, Inc. to Global Equities, Inc. in May, 1995. After his move to Global Equities, Claimant alleged that Moore convinced him to sell his ENGO warrants position at a loss and his CCSI warrants at a loss. Claimant further alleged that Moore, on or about May 26, 1995, convinced him to purchase an additional 44,500 shares of LCON. On or about June 12, 1995, Claimant sold 1,000 shares of LCON. Claimant now holds the remaining LCON shares which have been delisted.

Claimant alleged that Moore's actions constituted violations of Alabama securities laws, breach of fiduciary duty, common law fraud and misrepresentation and breach of contract. Claimant asserted that Investors Associates, Inc. and Global Equities, Inc., and their control persons had a duty to supervise Moore and are liable for the acts of Moore under the doctrines of respondeat superior and negligent supervision.

Respondent Global denied all allegations of wrongdoing asserted against it in the Statement of Claim and asserted that they did not participate in any wrongful conduct allegedly directed at Claimant and cannot be held liable to Claimant.

Respondents Christ and Shvarts denied each and every allegation contained in the Statement of Claim and asserted that the Claimant authorized all transactions and received confirmations for all activity in his account. Respondents Christ and Shvarts further maintained that any losses Claimant may have suffered were the result of market activity, and not any wrongdoing by Respondents Christ or Shvarts.

Respondents Moore and Investors asserted that the claim is without merit and they did not violate any written contract, statute, law, rule or regulation in connection with the allegations set forth in the Statement of Claim. Respondents Moore and Investors further asserted that Claimant assumed the risk of his transactions, and authorized the purchase and sale of all transactions executed in his account with Respondent Investors.

Further, Respondent Moore denied that he is liable to Claimant, denied that he misrepresented any investment to Claimant, denied that he breached a duty owed to Claimant and generally denied all of the allegations of wrongdoing asserted against him.

Respondents Lanaia, Sidler, Levine, Forsythe, Penna and Epstein asserted the claims against them should be dismissed on the grounds that they are barred by the federal statute of limitations and there is little, if any, legal justification for the claims asserted against them.

Respondent Reeves asserted the claims against him should be dismissed on the ground that he never agreed to or acted as an officer or control person of Investors Associates, Inc. Claimant denied the allegations set forth in the Motions to Dismiss.

**RELIEF REQUESTED**

Claimant Nolin requested (1) actual damages of \$64,807.00, (2) prejudgment interest, (3) punitive damages in the amount of \$200,000.00, and (3) all of Claimant's costs, expenses and disbursements, including attorneys' fees and costs of arbitration.

Respondent Global requested that the arbitration panel dismiss the Statement of Claim, award Global its costs and expenses of the arbitration and grant Global such other and further relief as is just and proper.

Respondents Christ and Shvarts requested an award dismissing all claims in the Statement of Claim, assessing the costs of the proceeding against Claimant and such other and further relief as the arbitrators deemed just and necessary.

Respondents Moore and Investors requested that the Statement of Claim be denied in its entirety and that Respondents Investors and Moore be awarded their costs, fees, expenses, and reasonable attorneys' fees in an amount not less than \$10,000.00 incurred in defending the claim and such other and further relief as justice and equity require.

Respondents Lanza, Sidler, Levine, Forsythe, Penna and Epstein requested a dismissal of all claims asserted against them plus an award of reasonable attorneys' fees in the amount of not less than \$12,000.00 plus such other and further relief as the arbitration panel deemed just and proper.

Respondent Reeves requested a dismissal of all claims asserted against him.

**OTHER ISSUES CONSIDERED & DECIDED**

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

Respondent Global Equities Corp. did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Global Equities Corp. has been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Global Equities Corp. has received due notice of the hearing, including the time and date of any and all hearings, as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents Investors Associates, Inc., Mark Moore, Herman Epstein, Lawrence Joseph Penna, Aleksandr Shvarts, Michael Henry Christ, Damiano Salvatore Coraci, Vadim Zeltser, Aleks Paul, Steven Z. Hellman, Wayne Charles Wichert, Martin Charles Wegard, Paul Ellwood Forsythe, III, Glenn Michael Lanza, Alex N. Cherepakhov, Donna Marie Silverman, Alfred Pierrepont Reeves,

III, Louis Levine, Kenneth Edward Sidler, Arthur Michael Pendrick, Melvin Stuart Simon, Jay Gary Hirschhorn, Evgueni Chitchekine and Calvin Edward Moore did not file with the NASD Regulation, Inc., Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure and Respondents Christ, Shvarts, Moore and Investors Associates, Inc. having answered the claim, and Moore having appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

At the commencement of the evidentiary hearing, the arbitration panel was informed that the Claimant had dismissed, with prejudice, pursuant to the agreement of the relevant parties, all claims against Respondents Christ, Shvarts, Investors, Epstein and Penna.

At the commencement of the evidentiary hearing, the arbitration panel was informed that the Claimant had dismissed, without prejudice, all claims against Respondents Wegard, Zeltser, Paul, Hellman, Wichert and Coraci.

The motion to dismiss, without prejudice, was granted by the arbitration panel with regard to Respondents Cherepakhov, Silverman, Reeves, Chitchekine, Hirschhorn and Calvin Moore.

The arbitration panel dismissed, without prejudice, all claims against Respondents Pendrick, Simon, Forsythe, Levine, Lanata and Sidler.

#### 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:

Respondent Mark Moore is liable and shall pay to the Claimant the sum of \$44,913.00 in compensatory damages, plus pre-judgment interest in the sum of \$8,084.00.

Respondent Mark Moore is liable and shall pay to the Claimant the sum of \$15,000.00 in attorneys' fees pursuant to Alabama law.

Respondent Global Equities Group, Inc. is jointly and severally liable with Respondent Mark Moore for one-half of the damages, including attorneys' fees, set forth above.

Respondents Mark Moore and Global Equities, Inc. are liable, jointly and severally, and shall pay to Claimant the sum of \$950.00 representing reimbursement of the claim filing fee and the hearing session deposit previously paid by Claimant to NASD Regulation, Inc.

Claimant's request for punitive damages is denied.

**OTHER FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, Claimant has paid to NASD Regulation, Inc. the \$200.00 claim filing fee.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Global Equities Group, Inc. has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Investors Associates, Inc. shall pay to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code of Arbitration Procedure, Respondent Investors Associates, Inc. has paid to NASD Regulation, Inc. the sum of \$750.00 representing the adjournment fee for the hearings scheduled for February 25, 26 and 27, 1998.

**FORUM FEES**

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$5,250.00 (one pre-hearing conference-panel \$750.00 plus six sessions x \$750.00) are assessed as follows:

Claimant is assessed the sum of \$2,625.00 less the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$1,875.00.

Respondents Global Equities Group, Inc. and Mark Moore are assessed, jointly and severally, the sum of \$2,625.00.

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

Concurring Arbitrators' Signatures  
Name

/s/  
Roger A. Kirschenbaum, Esq.

/s/  
Ilene T. Gormly, Esq.

/s/  
Chesley V. Morton, Jr.

Public/Industry

Public

Public

Industry

Date of Decision: January 12, 1999