

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

Barry D. Keating

97-00145

Name of Respondent

Gilbert Marshall & Company, Inc.

REPRESENTATION

Claimant Barry D. Keating ("claimant") appeared pro se.

For Respondent Gilbert Marshall & Company, Inc. ("respondent") appeared Michael Usher, President of respondent.

CASE INFORMATION

Statement of Claim was filed on: January 8, 1997.

Claimant's Submission Agreement was signed on: January 8, 1997.

Statement of Answer was filed by respondent on: February 18, 1997.

Respondent's Submission Agreement was signed on: February 14, 1997.

HEARING INFORMATION

Hearing Date/Session: July 14, 1997 - 1 session

The hearing was conducted at the offices of NASD Regulation, Inc. located in Boston, Massachusetts.

CASE SUMMARY

In his Statement of Claim, claimant alleged that respondent admitted several violations of Massachusetts securities laws in the sale to him of securities in Sky Scientific, Inc., thereby giving rise to liability to claimant for damages, interest and costs, including the right to rescind his purchases.

In his written defense, respondent denied fraud, deception or any other wrongdoing in the sale of Sky Scientific, Inc. stock to claimant and stated that all of claimant's purchases were unsolicited.

RELIEF REQUESTED

Claimant requested rescission and damages in the amount of \$7,700.13 plus 6% interest per annum, payment of NASD costs of \$75.00 and other costs of \$82.50.

Respondent requested that all claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrator made the following determinations regarding respondent who did not appear at the hearing:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The arbitrator found that respondent was a member of the NASD at the time this controversy arose. Accordingly, the arbitrator found personal jurisdiction over respondent pursuant to Rule 10301 of the Code.
3. The arbitrator reviewed the documents submitted at the hearing by the NASD staff regarding the hearing notice sent to respondent, the return receipt card for that notice received by the NASD staff, and considered the fact that respondent submitted a letter dated July 10, 1997 stating that it would not appear at the hearing. Based upon the foregoing and, pursuant to Rules 10314(c), 10317 and 10318 of the Code, the arbitrator proceeded with the hearing without respondent whose absence was unexcused.

In its written argument, respondent contended that there was no jurisdiction in this arbitration proceeding because the claim was based upon violations of State securities laws. After considering respondent's argument, the arbitrator denied the claim against jurisdiction.

Certain documents were submitted by claimant after the hearing, in response to a request by the arbitrator. The date for the completion of these submissions was July 21, 1997, whereupon the record was closed.

AWARD

The arbitrator made the following observations, not for the purposes of expressing findings of fact or legal conclusions, but in order to explain key elements of the rationale behind the award.

Claimant, a resident of Massachusetts, purchased securities in Sky Scientific, Inc., on five occasions from June 21, 1994 through August 22, 1995, with respondent as the broker, all through telephone contact. As a result, claimant acquired securities now represented by 6100 shares of Sky Scientific, Inc., for a total purchase price of \$7,700.13.

In acting as broker to effect these purchases, respondent engaged in securities transactions with a Massachusetts resident. Although registered with the NASD as a broker-dealer, respondent was not so registered with the Massachusetts Securities Division. In addition, the evidence showed that respondent made or caused to be made misleading statements and misrepresentations to claimant and, on one occasion, fraudulently induced claimant to forward funds, all in connection with those purchases.

On November 25, 1996, the Massachusetts Securities Division issued a Consent Order, agreed to by respondent, to the effect that respondent had violated Massachusetts law in engaging in the above-referenced securities transactions. Pursuant to the Consent Order, respondent gave written notice to claimant of his rights on December 27, 1996. Claimant filed his Statement of Claim in this arbitration well within the applicable statute of limitations.

These violations, and the foregoing conduct on the part of respondent, give rise to, inter alia, the right to rescind the purchases on the part of claimant and others, together with 6% per annum interest as to each purchase price, from the date of purchase, pursuant to M.G.L., Chapter 110A, section 410, as well as the right to recover costs, including NASD filing and session fees.

Therefore, claimant has established his right to rescind the purchases of Sky Scientific, Inc., and receive a refund of his purchase price, together with interest and costs.

After considering the pleadings, the testimony and the evidence presented at the hearing and the post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable for and shall pay claimant the sum of **SEVEN THOUSAND SEVEN HUNDRED DOLLARS and THIRTEEN CENTS (\$7,700.13)**.
2. Respondent be and hereby is liable to claimant for interest at the rate of six percent (6%) per annum simple interest on the amount of each purchase from the date of each purchase until the award is paid, which interest is determined to be in the amount of One Thousand Two Hundred Eighty-Two Dollars and Ninety-One Cents (\$1,282.91) through June 30, 1997, and One Dollar and Twenty-Seven Cents (\$1.27) per diem thereafter.
3. Respondent be and hereby is liable and shall pay claimant his costs in the sum of \$150.00.
4. Respondent be and hereby is liable for and shall pay claimant the sum of \$200.00 to reimburse claimant for a portion of the filing fees previously deposited with NASD Regulation.
5. Upon payment of the award and interest in full, claimant shall execute and deliver any documents necessary to transfer title to the 6100 shares of Sky Scientific, Inc. to respondent.
6. All other claims are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrator has determined that NASD Regulation shall retain the \$75.00 non-refundable filing fee and the \$100.00 member surcharge and has assessed the following forum fees:

1 hearing session	=	\$200.00
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Respondent be and hereby is liable for the sum of \$200.00, representing the total amount of forum fees assessed. Claimant previously deposited \$200.00 with NASD Regulation. Respondent shall pay claimant \$200.00 as provided in the "Award" section above.

Arbitrator's Signature

A handwritten signature in cursive script, appearing to read "David Plimpton", written over a horizontal line.

David Plimpton, Esq.
Chairperson-Public Arbitrator

Date of Decision: September 4, 1997