

NASD Regulation, Inc. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Eugene Bellagamba and Josephine Bellagamba

and

97-03141

Name of Respondent

Baker Weeks & Company now known as
Hornblower & Weeks, Inc.
Alden Capital Markets, Inc.
John Rooney
James Cohen
Alexander Naroditsky a/k/a Alexander Narod
Jeffrey Chicola

REPRESENTATION OF PARTIES

Eugene Bellagamba and Josephine Bellagamba ("**Claimants**") were represented by William D. Nelson, Esq., Slivka, Robinson Waters & O'Dorisio, P.C., Denver, Colorado.

Baker Weeks & Company now known as Hornblower & Weeks, Inc. ("**Respondent Baker**") was represented by John Rooney.

Alden Capital markets, Inc. ("**Respondent Alden**") was represented by Martin M. Berliner, Esq., Berliner, Zisser, Walter & Gallegos, Denver, Colorado. Mr. Berliner withdrew as counsel of record prior to the hearing of this matter.

John Rooney ("**Respondent Rooney**") appeared *pro se*.

James Cohen ("**Respondent Cohen**") did not appear at the hearing.

Jeffrey Chicola ("**Respondent Chicola**") represented himself.

Alexander Naroditsky a/k/a Alexander Narod ("**Respondent Naroditsky**") was represented by Maranda E. Fritz, Esq., Fritz & Miller, P.C., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about June 25, 1997. Amended Statement of Claim was filed on or about October 29, 1997. Submission Agreement of Claimant Eugene Bellagamba and Josephine Bellagamba was signed on June 19, 1997.

Respondent Baker Weeks & Company now known as Hornblower & Weeks, Inc. did not file a responsive pleading.

Statement of Answer dated August 15, 1997 was filed by Respondent John Rooney. Submission Agreement of Respondent John Rooney was signed on August 15, 1997.

Respondent James Cohen did not file a responsive pleading.

Statement of Answer was filed by Respondent Jeffrey Chicola on or about August 22, 1997. Submission Agreement of Respondent Jeffrey Chicola was signed on August 21, 1997.

Statement of Answer was filed by Respondent Alexander Naroditsky a/k/a Alexander Narod on or about September 9, 1997. Submission Agreement of Respondent Alexander Naroditsky a/k/a Alexander Narod was signed on August 25, 1997.

Statement of Answer was filed by Respondent Alden Capital Markets, Inc. on or about August 18, 1997. Submission Agreement of Respondent Alden Capital Markets, Inc. was signed on August 14, 1997 by Alfred Salazar.

HEARING INFORMATION

The hearing was held on Tuesday, April 14, 1998 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that Respondents induced them to purchase ICTT Technologies, a bulletin board security, knowing it to be unsuitable for them given their economic circumstances and needs and sold the securities to them by misrepresenting the risk and nature of the security or by failing to properly disclose the nature and risk of the investment. It was alleged that the actions of Respondents constituted breach of fiduciary duty, misrepresentation and common law fraud, and violations of the Colorado Securities laws.

Respondent Alexander Naroditsky denied the allegations set forth in the Statement of Claim. Respondent Naroditsky stated that he was not involved in the first two purchases of ICTT Technologies. It was further stated that he did no more than discuss with Mr. Bellagamba his

interest in a third purchase, and understood that Mr.. Bellagamba had been previously advised of the risks of purchasing the stock.

Respondent Jeffrey Chicola denied the allegations against him. it was specifically stated by Respondent Chicola that he never solicited Mr.. Bellagamba. In addition, Respondent Chicola stated that he was never an employee of Alden Capital markets and never opened an account for Mr. Bellagamba there.

Respondent Alden Capital Markets, Inc. denied the allegations set forth in the Statement of Claim. Specifically, Respondent Alden stated that all trades are the subject of the Statement of Claim were effected prior to the purchase of all the assets of Baker Weeks by it. It was also stated that Respondent Alden is not the successor to Baker Weeks.

Respondent John Rooney stated that he was never in a position to disclose information, recommend investments and did not breach his fiduciary responsibility to the Claimants. In addition, Respondent Rooney denied making any misrepresentations, recommendations or any other action with respect to the Claimants.

RELIEF REQUESTED

Claimants requested an award in the amount of \$20,150 together with interest at the statutory rate, costs and attorneys' fees. In addition, Claimant requested such other and further relief as the arbitrators deem appropriate.

Respondent Naroditsky requested that the claims asserted against him be dismissed or judgment entered in his favor. In the alternative, Respondent Naroditsky requested an award against Respondent Baker Weeks in the amount he is directed to pay to Claimants based on Baker Weeks' failure and refusal to reverse the transaction.

Respondent Alden Capital markets, Inc. requested that the arbitrators render an award in its favor dismissing all allegations against it.

Respondent Chicola requested that the claims against him be dismissed.

Responent Rooney requested that the claims asserted against him be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent James Cohen had 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 Respondent James Cohen had 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.

Respondents Baker Weeks & Company now known as Hornblower & Weeks, Inc. and John Rooney did not file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD") a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and having appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Prior to the hearing of this matter, the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD") was advised that the claims asserted against Respondent Alden Capital Markets, Inc. were withdrawn

The NASD was also advised that the claims asserted against Respondents Chicola and Naroditsky were settled.

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 the NASD.

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 Baker Weeks & Company now known as Hornblower & Weeks, Inc., John Rooney and James Cohen shall be and hereby are jointly and severally liable for and shall pay to the Claimants Eugene Bellagamba and Josephine Bellagamba the sum of \$20,150 (**twenty thousand one hundred fifty dollars**) as compensatory damages.
2. Interest at the rate of 3% per annum is awarded as follows:
 - ▶ on \$4,075 from and inclusive of July 30, 1996;
 - ▶ on \$8,000 from and inclusive of October 10, 1996; and
 - ▶ on \$8,075 from and inclusive of October 17, 1996.
3. Respondents Baker Weeks & Company now known as Hornblower & Weeks, Inc., John Rooney and James Cohen shall be and hereby are jointly and severally liable for and shall

pay to the Claimants Eugene Bellagamba and Josephine Bellagamba the sum of \$7,306.15 (seven thousand three hundred six dollars and fifteen cents) as attorneys' fees and costs.

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 two (2) sessions x \$400 = \$800 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (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 Rule 10332(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant Eugene Bellagamba and Josephine Bellagamba. Respondents Baker Weeks & Company now known as Hornblower & Weeks, Inc. John Rooney and James Cohen shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$400 as the balance due for forum fees.

Pursuant to Rule 10333 of the Code, the NASD shall **retain** the non-refundable member surcharge in the amount of \$200 previously paid to the NASD by Respondent Baker Weeks & Company. Pursuant to Rule 10333 of the Code, the NASD shall **assess** the non-refundable member surcharge in the amount of \$200 against Respondent Alden Capital Markets, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Edmund Epstein
Edmund Epstein, Esq.
Public Arbitrator, Presiding Chair

April 28, 1998

/s/ Dom Alecci
Dom Alecci
Public Arbitrator

April 29, 1998

/s/ Scott Steinhauer
Scott Steinhauer
Industry Arbitrator

April 29, 1998