

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

John Diaz

vs.

Case No.
97-04335

Name of Respondents

D.H. Blair & Co., Inc., Kenton E. Wood
William Badinelli and Elliott Polatoff

REPRESENTATION

For Claimant John Diaz ("Claimant"), Susan F. Drogin, Esq., located in Boston, Massachusetts.

For Respondents D.H. Blair & Company ("D.H. Blair"), Kenton E. Wood "(Wood)", and William Badinelli ("Badinelli"), Gary Klein, Esq. in-house counsel at D.H. Blair located in New York, New York.

For Respondent Elliott Polatoff ("Polatoff"), Daniel E. Katz, Esq. located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on August 28, 1997.

Claimant's Submission Agreement was signed on August 28, 1997.

Claimant's Motion for Entry of Default was filed on February 2, 1998.

Claimant's Opposition to Cross Claim was filed on April 28, 1998.

Respondent's Statement of Answer was filed on January 16, 1998.

D.H. Blair's Submission Agreement was signed on January 16, 1998.

Wood's Submission Agreement was signed on January 16, 1998.

Badinelli's Submission Agreement was signed on January 16, 1998.

D.H. Blair, Wood, and Badinelli filed a Motion to Bar Cross Claim on April 21, 1998.

Polatoff's Statement of Answer was filed on February 3, 1998.

Polatoff's Submission Agreement was signed on February 4, 1998.

Polatoff's Cross Claim was filed on April 17, 1998.

Polatoff's Opposition to Cross Claim was filed on April 24, 1998.

HEARING INFORMATION

Pre-Hearing Telephone Conference: April 3, 1998 - 1 session

CASE SUMMARY

Claimant alleges that D.H. Blair and its controlling and affiliated registered representative recommended and sold Claimant unsuitable "junk" securities in which D.H. Blair was a market maker. Claimant also alleges that his investment goals were conservative, long-term growth for retirement income 30 years hence and that he lost over \$100,000. Claimant further alleges that D.H. Blair, Wood, Badinelli, and Polatoff violated various securities and common laws in handling his account.

Respondents D.H. Blair, Wood, and Badinelli deny the allegations of wrongdoing, deny liability and maintain that the investments in Claimant's account were consistent with his investment objective of speculation. Said Respondents also maintain that Claimant indicated that he was an attorney with 10 years investment experience in stocks and bonds, had an annual income of at least \$150,000, a net worth exclusive of residence of at least \$400,000, and a liquid net worth of at least \$100,000.

Respondent Polatoff denies the allegations of wrongdoing and denies liability. Polatoff states that Claimant's brother, Dr. Louis Diaz, in 1993, was investing in small cap companies which D.H. Blair brought public and was a market maker. Polatoff also states that Dr. Diaz was successful, and Claimant wanted to reap the same benefits. Polatoff further states that at Dr. Diaz' request, he contacted Claimant about opening an account with D.H. Blair.

RELIEF REQUESTED

Claimant requests an award of at least \$106,138, interest under Mass. G. L. c. 231 at the statutory rate of 12%, reasonable attorney's fees, lost opportunity damages, payment of all forum fees and expenses, and punitive damages.

D.H. Blair, Badinelli, Wood, and Polatoff (collectively "Respondents") request that the Statement of Claim be denied in its entirety, and that they be awarded forum fees and any other relief deemed appropriate by the panel. Respondents Badinelli and Wood also request that the panel order that any and all allegations of misconduct in connection with this arbitration be expunged from their Forms U-4.

OTHER ISSUES CONSIDERED & DECIDED

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 remains on file with the NASD.

On March 27, 1998, this panel denied Claimant's Motion to Bar Polatoff's Answer. At the April 3, 1998 pre-hearing conference, Claimant's counsel informed the panel that Claimant had resolved his disputes with D.H. Blair, Badinelli, and Wood. On May 7, 1998, the panel dismissed without prejudice Polatoff's Cross Claim against D.H. Blair as untimely.

AWARD

After considering the pleadings, the statements at the pre-hearing conference, and reviewing the Claimant's Motion for Voluntary Dismissal, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Prior to the hearings scheduled for August 12 and 13, 1998, Claimant informed NASD Regulation that he had resolved this dispute with all Respondents. In a Motion for Voluntary Dismissal signed by counsel for Claimant and counsel for Respondents D.H. Blair, Badinelli, and Wood, Claimant moved for voluntary dismissal of the claims against Respondents, Wood and Badinelli and for expungement of any reference to this arbitration case from the Badinelli's and Wood's Forms U-4. This panel grants that request and directs NASD to expunge any reference to this arbitration from the Respondents Badinelli's and Wood's CRD records.

OTHER COSTS

Pursuant to Rule 10333 of the *Code of Arbitration Procedure* ("Code"), D.H. Blair has paid to NASD Regulation, Inc. the \$1,500.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the *Code*, NASD Regulation shall retain the \$600.00 fee which Polatoff paid for the postponement of the May 27, 1998 hearings.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimant, and has ruled that Polatoff shall pay NASD Regulation the \$500.00 non-refundable cross claim filing fee. The parties have agreed that Claimant and Polatoff will pay the following Forum Fees:

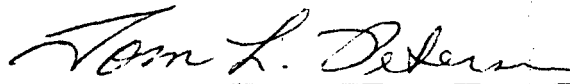
1. Claimant is assessed \$375.00 in forum fees. Claimant previously paid \$975.00 and is entitled to a \$600.00 refund.
2. Polatoff is assessed \$375.00 in forum fees. Polatoff previously paid \$225.00 and owes a \$150.00 balance. Polatoff shall satisfy all costs and fees assessed by reimbursing Claimant \$600.00, and remitting the balance of \$50.00 in forum fee to NASD Regulation.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Tom L. Peterson, Esq.	-	Public Chairperson
Simon J. Tager	-	Public Panelist
Stephen M. Acerra, Jr., Esq.	-	Industry Panelist

CONCURRING ARBITRATOR'S SIGNATURE



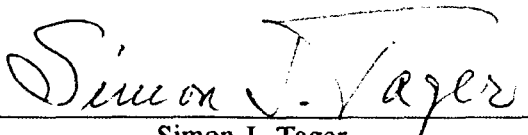
Tom L. Peterson, Esq.

Date of decision: October 20, 1998

ARBITRATION PANEL

Tom L. Peterson, Esq.	-	Public Chairperson
Simon J. Tager	-	Public Panelist
Stephen M. Acerra, Jr., Esq.	-	Industry Panelist

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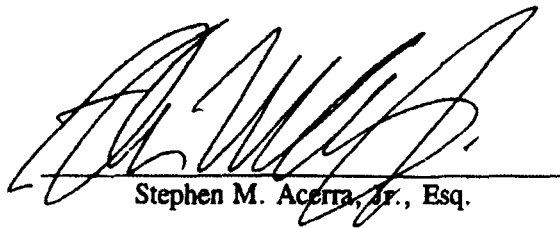

Simon J. Tager

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Stephen M. Acerra, Jr., Esq.

Date of decision: October 20, 1998