

AWARD
NASD Regulation, Inc.

In the matter of the Arbitration Between

Name of Claimant(s)

Douglas K. Smart
Koni K. Smart

Arbitration
No. 98-00002

Name of Respondent(s)

Michael E. Spagnoli
Mark A. Hanna
The Harriman Group Incorporated

REPRESENTATION

For Claimants: Randall R. Heiner, Esq., Salt Lake City, Utah

For Respondent Michael E. Spagnoli: Edward J. Toscano, Esq.,
Garden City, New York

For Respondent Mark A. Hanna: Mark A. Hanna, Manhasset, New York

For Respondent The Harriman Group Incorporated: Frank Casillo,
The Harriman Group Incorporated, Woodbury, New York

CASE INFORMATION

Statement of Claim filed: December 30, 1997

Claimants' Submission Agreement signed: December 30, 1997

Statement of Answer filed by Respondent Michael E. Spagnoli:
February 18, 1998

Respondent Michael E. Spagnoli's Submission Agreement signed:
February 20, 1998

Respondents Mark A. Hanna and The Harriman Group Incorporated did not file a Statement of Answer or Submission Agreements. However, said Respondents are subject to NASD Regulation, Inc. (NASD) jurisdiction in accordance with Rule 10301 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):
October 20, 1998 (one session)

Hearing Date(s)/Session(s): February 8, 1999 (one session)

Hearing Location: Salt Lake City, Utah

CASE SUMMARY

Claimants alleged the following claims with respect to investments in various securities: 1) Violation of Section 10b of the Securities Exchange Act of 1934 15 U.S.C. Section 78j and Violation of Rule 10b-5; 2) Liability under Section 20 of the Securities Exchange Act of 1934 15 U.S.C. Section 78t; 3) Violation of Utah Uniform Securities Act, Section 61-1-1(2-3); 4) Violation of Utah Uniform Securities Act, Section 61-1-22(4); 5) Breach of Contract; 6) Common Law Fraud; 7) Negligence; 8) Common Law Rescission; 9) Liability against Respondent The Harriman Group Incorporated under Respondeat Superior; 10) Negligent Supervision; 11) Breach of Fiduciary Duty; and 12) Punitive Damages pursuant to Utah Code Ann. Section 78-18-1.

Respondent Michael E. Spagnoli denied Claimants' allegations of wrongdoing and alleged that Mr. Smart was fully aware of the risks of profits and losses associated with Claimants' investments and voluntarily assumed those risks. Respondent Spagnoli also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested judgment in their favor against Respondents, jointly and severally, as follows:

1. Awarding Mr. and Mrs. Smart \$33,081.70 for their out-of-pocket losses on their investments through Respondents from 1996 to the present;

2. Awarding Mr. and Mrs. Smart their payment of commissions and fees, the amount to be determined at the hearing, based on Claimants' allegations that Respondents churned their accounts;

3. Awarding Mr. and Mrs. Smart \$99,245.10, which is three times the amount of their losses based on Claimants' allegations that Respondents violated the Utah Uniform Securities Act;

4. Awarding Mr. and Mrs. Smart market adjusted damages (the amount to be determined at hearing);

5. Allowing rescission of Mr. and Mrs. Smart's misrepresented and unsuitable investments;

6. Awarding Mr. and Mrs. Smart punitive damages under all counts;

7. Awarding Mr. and Mrs. Smart their attorney fees as provided for under the Utah Uniform Securities Act;

8. Awarding Mr. and Mrs. Smart statutory pre-judgment interest of 12%;

9. Awarding Mr. and Mrs. Smart post-judgment interest, costs, filing and hearing fees and other disbursements; and

10. Granting such other further or different relief as the tribunal may deem just and equitable.

Respondent Spagnoli requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 1, 1999, the panel of arbitrators was advised of the bankruptcy filing by Respondent Joseph J. Tuozzo and that the above-captioned matter is stayed with respect to Mr. Tuozzo.

Respondents did not appear at hearing. The panel of arbitrators determined that Respondents received proper service and notice and ruled to proceed in Respondents' absence.

Claimants agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, Claimants agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

FINDINGS

1. All Respondents, including Respondents Mark A. Hanna and The Harriman Group Incorporated, have been served with Claimants' Statement of Claim, dated December 30, 1997.

2. Respondent Mark A. Hanna was the supervisor of Respondent Michael E. Spagnoli; directly and/or indirectly controlled the activities of Respondent Michael E. Spagnoli; and did not sustain the burden of proof, nor offer any evidence whatsoever, that he did not know, and in the exercise of reasonable care could not have known, of the existence of the

facts by reason of which the liability asserted against him in the Statement of Claim was alleged to have existed.

3. Each and all of the Respondents obtained money from the Claimants through actual fraud, false pretenses and the willful and malicious false representation of material facts which they knew to be false and which were justifiably relied upon by the Claimants.

4. The conduct by each and all of the Respondents, with respect to the Claimants, was willful, reckless, malicious and performed with either the actual intent of causing financial injury to the Claimants and/or under circumstances where such financial injury was substantially certain to occur.

5. That Respondents Mark A. Hanna, Michael E. Spagnoli and The Harriman Group Incorporated, jointly caused the Claimants Douglas K. Smart and Koni K. Smart, actual damages in the amount of \$33,081.70.

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. In reliance on Section 61-1-22(2) of the Utah Code Annotated, Respondents Mark A. Hanna, Michael E. Spagnoli and The Harriman Group Incorporated are jointly and severally liable for and shall pay to Claimants Douglas K. Smart and Koni K. Smart, a total of three times the \$33,081.70 amount paid by Claimants to Respondents for securities, for a total award of \$99,245.10.

2. In addition to the \$99,245.10 amount awarded herein, Respondents Mark A. Hanna, Michael E. Spagnoli and The Harriman Group Incorporated are jointly and severally liable for and shall pay to Claimants Douglas K. Smart and Koni K. Smart, interest of 12% per annum from February 1, 1997 until February 8, 1999 on the principal amount of \$33,081.70 and that from February 9, 1999 until the award is paid in full, that interest accrue at the rate of 12% per annum on the \$99,245.10 amount of the award.

3. Respondents Mark A. Hanna, Michael E. Spagnoli and The Harriman Group Incorporated are jointly and severally liable for and shall pay to Claimants Douglas K. Smart and Koni K. Smart, treble damages in the amount of \$99,245.10 together with interest as determined in accordance with paragraph 2 above.

4. Claimants' claims for punitive damages are denied.

5. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimants' hearing session deposit in the amount of \$500.00. Forum fees shall be assessed against Respondents Mark A. Hanna, Michael E. Spagnoli and The Harriman Group Incorporated, jointly and severally, in the amount of \$1,000.00, calculated as follows: One pre-hearing session times \$500.00 plus one hearing session times \$500.00.

Fees are payable to NASD Regulation, Inc.

OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent The Harriman Group Incorporated shall pay to the NASD the \$1,500.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent The Harriman Group Incorporated shall pay to the NASD \$3,100.00 in processing fees previously invoiced.


ARBITRATORS

Name Public / Industry

A.O. Headman, Jr., Esq.
James L. Connell
Stephen B. Ivey

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures


A.O. Headman, Jr., Esq.

James L. Connell

Stephen B. Ivey

Date Served:

MAR 16 1999

Date of Decision: _____

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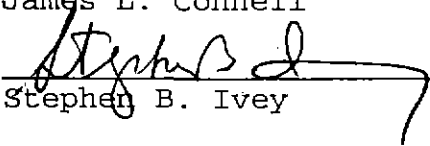
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Stephen B. Ivey

Date Served:

MAR 16 1999

Date of Decision: 2-8-1999