

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant(s)

TLC Precision Wafer Technology, Inc. and Timothy Childs

and

99-00762
Minneapolis, Minnesota

Name of Respondents

Sterling Foster & Company, Inc.
Adam Lieberman
Michael R. MacCaull

REPRESENTATION OF PARTIES

TLC Precision Wafer Technology, Inc. and Timothy Childs ("**Claimants**") were represented by David P. Pearson, Esq., Winthrop & Weinstine, Minneapolis, Minnesota.

Sterling Foster & Company, Inc. ("**Respondent Sterling Foster**") and Adam Lieberman ("**Respondent Lieberman**") did not appear at the hearing or file responsive pleadings.

Michael R. MacCaull ("**Respondent MacCaull**") was represented by Richard R. Leff, Esq., Kew Gardens, New York.

CASE INFORMATION

The Statement of Claim was filed on or about February 19, 1999. Amended Statement of Claim was filed on or about March 9, 1999. Letter dated January 25, 2001 wherein Claimants submitted an Affidavit of Service of the Statement of claim, Amended Statement of Claim and Claimants' Disclosure of Witnesses and Potential Exhibits on Adam Lieberman in his personal capacity and as an Officer of Sterling Foster & Company, Inc. Timothy Childs signed submission Agreement of Claimant TLC Precision Wafer Technology, Inc. on February 16, 1998. Submission Agreement of Claimant Timothy Childs was signed on February 16, 1998.

Letter dated October 19, 2000 submitted on behalf of Respondent Michael R. MacCaull.

CASE SUMMARY

Claimants alleged that Respondents defrauded them by:

- Failing to disclose or explain the nature of ML Direct warrants and Children's Wonderland stock;
- Artificially inflating the value of the stocks;
- Executing trades without authorization;
- Failing to execute the sale of the Children's Wonderland stock as directed; and
- Making material misstatements regarding ML Direct A warrants and Children's Wonderland knowing those statements to be false.

In addition, Claimants alleged that Respondents engaged in the sale of unsuitable securities.

Respondent MacCaull, through his attorney in the letter dated October 19, 2000, stated that he would not be able to testify in this matter and if called as a witness, would invoke his Fifth Amendment privilege, upon advice of counsel. Respondent MacCaull further stated that he does not believe that he should bear individual responsibility for any losses to claimant.

RELIEF REQUESTED

Claimants requested an award in the total amount of \$100,349.

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 Respondents Sterling Foster & Company, Inc. and Adam Lieberman had been properly served with the Statement of Claim and Amended 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 Respondents Sterling Foster & Company, Inc. and Adam Lieberman 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 Sterling Foster & Company, Inc., Adam Lieberman and Michael R. MacCaull did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the Code and are bound by the determination of the arbitration panel on all issues submitted.

The parties participating in 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 have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Sterling Foster & Company, Inc. and Michael R. MacCaull shall be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$23,762 (**Twenty Three Thousand Seven Hundred Sixty Two Dollars**) as compensatory damages.
2. Respondents Sterling Foster & Company, Inc. and Michael R. MacCaull shall be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$650 (**Six Hundred Fifty Dollars**) as reimbursement of fees paid to the NASD.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$200.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is Sterling Foster & Company, Inc. and fees were not assessed due to the terminated status of Sterling Foster & Company, Inc.

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing session(s) with Panel x \$750.00			= \$2,250.00
Pre-hearing conference(s):	February 3, 2000	1 session	
	January 24, 2001	1 session	
	March 28, 2001	1 session	
Three (3) Hearing sessions x \$750.00			= \$2,250.00
Hearing Date(s):	October 25, 2000	1 session	
	May 8, 2001	1 session	
	<u>June 6, 2001</u>	<u>1 session</u>	
Total Forum Fees			= \$4,500.00

The Arbitration Panel has assessed \$450.00 of the forum fees to TLC Precision Wafer Technology, Inc. and Timothy Childs.

The Arbitration Panel has assessed \$4,050.00 of the forum fees jointly and severally to Sterling Foster & Company, Inc. and Michael R. MacCaull.

Fee Summary

Claimants, TLC Precision Wafer Technology, Inc. and Timothy Childs, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 200.00
<u>Forum Fees</u>	= \$ 450.00
Total Fees	= \$ 650.00
<u>Less payments</u>	= \$ 650.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Sterling Foster & Company, Inc. and Michael R. MacCaull, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$4,050.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,050.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Frederick B. Anderson, Esq. - Public, Presiding Chair
Phyllis Karasov, Esq. - Public Arbitrator
Harold H. Tearse, III - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frederick B. Anderson
Frederick B. Anderson, Esq.
Public Arbitrator, Presiding Chair

August 17, 2001
Signature Date

/s/ Phyllis Karasov
Phyllis Karasov, Esq.
Public Arbitrator

August 18, 2001
Signature Date

/s/ Harold H. Tearse, III
Harold H. Tearse, III
Non-Public Arbitrator

August 21, 2001
Signature Date

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NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

Frederick B. Anderson, Esq. - Public, Presiding Chair
Phyllis Karasov, Esq. - Public Arbitrator
Harold H. Tearse, III - Non-Public Arbitrator

Concurring Arbitrators:

Frederick B. Anderson

Frederick B. Anderson, Esq.
Public Arbitrator, Presiding Chair

8/17/01

Signature Date

Phyllis Karasov, Esq.
Public Arbitrator

Signature Date

Harold H. Tearse, III
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
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Phyllis Karasov, Esq. - Public Arbitrator
Harold H. Tearse, III - Non-Public Arbitrator

Concurring Arbitrators:

Frederick B. Anderson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Phyllis Karasov
Phyllis Karasov, Esq.
Public Arbitrator

8/18/01
Signature Date

Harold H. Tearse, III
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

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Phyllis Karasov, Esq. - Public Arbitrator
Harold H. Tearse, III - Non-Public Arbitrator

Concurring Arbitrators:

Frederick B. Anderson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Phyllis Karasov, Esq.
Public Arbitrator

Signature Date

Harold H. Tearse

Harold H. Tearse, III
Non-Public Arbitrator

8-21-01

Signature Date