

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Russ & Margo Wittenberg and
Nancy Black

and

99-01701
Scottsdale, Arizona

Name of Respondents

W.J. Gallagher & Company, Inc.
William J. Gallagher
Glenn Jackson
Sione Tangen

REPRESENTATION OF PARTIES

Russ & Margo Wittenberg and Nancy Black ("**Claimants**") were represented by Richard G. Himelrick, Esq., Tiffany & Bosco, Phoenix, Arizona.

W.J. Gallagher & Company, Inc. ("**Respondent WJ Gallagher**") and William J. Gallagher ("**Respondent Gallagher**") were represented by Stephen Acker, Esq., Acker Kowalick & Whipple, P.C., Los Angeles, California.

Glenn Jackson ("**Respondent Jackson**") was represented by Jonathan S. Robbins, Esq., Atlas Pearlman PA, Fort Lauderdale, Florida.

Sione Tangen ("**Respondent Tangen**") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about April 12, 1999. Response to Respondent Jackson's Motion to Dismiss for Lack of Jurisdiction was filed on or about May 5, 2000. Response to Sione Tangen's Motion was filed by Claimants on or about May 5, 2000. Claimants' Supplemental Exhibits in Response to Jackson's Motion to Dismiss was filed on or about May 16, 2000. Submission Agreement of Claimants Russ & Margo Wittenberg was signed on March 24, 1999.

Statement of Answer was filed by Respondents W.J. Gallagher & Company, Inc. and William J. Gallagher on or about June 11, 1999. Submission Agreement of Respondent W.J. Gallagher & Company, Inc. was signed on January 6, 2000 by Ernest B. Arnold.

Motion to Dismiss for Lack of Jurisdiction Respondent Glenn Jackson on or about May 5, 2000. Letter dated May 8, 2000 in reply to Claimants' Responses to Respondent Glenn Jackson's Motion to Dismiss for Lack of Jurisdiction was received on May 8, 2000.

Statement of Answer and Request for Dismissal was filed by Respondent Sione Tangen on or about February 9, 2000.

CASE SUMMARY

Claimants submitted the following summary:

During 1995 claimants made investments recommended by their broker Glenn Jackson, who was licensed through W.J. Gallagher & Co., Inc. Mr. Jackson's branch manager was Sione Tangen. William J. Gallagher was the W.J. Gallagher principal responsible for supervising Tangen and the San Francisco office where Tangen and Jackson worked.

Claimants' investments were sought for retirement. On Jackson's recommendation, the Wittenbergs invested \$218,000 in three nontrading companies named Innopet, Inc., Voice Across America, LLC and ChinaWire. Ms. Black invested \$50,000 in Voices. The investments were worthless. All of claimants' money was lost without any return. Claimants contend the investments were shams that were recommended by Jackson without regard for claimants' retirement goals and despite Jackson's knowledge that the investments were not legitimate financial products.

Claimants contend William Gallagher and Sione Tangen failed to properly supervise Jackson, who had a felony conviction when he was hired by W.J. Gallagher & Co. Claimants allege that W.J. Gallagher & Co., Inc. is liable for Jackson's securities violations either because of negligent supervision or under the doctrine of apparent authority.

Respondents WJ Gallagher and Gallagher denied the allegations set forth in the Statement of Claim. These Respondents specifically stated that they were not party to the transactions and the transactions were not processed through the books of WJ Gallagher. It was further stated that they had acted in good faith and had no indication that the supervision in place at the OSJ would cover up activities away from the firm. These Respondents further stated that they were not notified of any background problems until receipt of a Department of Justice notice dated May 10, 1996 following the fingerprint check submitted with the Form U-4, which was three months after the alleged

violations. It was also stated that Mr. Tangen was suspended and removed as supervisor in accordance with NASD sanctions when the Respondents were notified on March 15, 1996.

Respondent Sione Tangen denied speaking with any of the Claimants. He further denied that he was the manager at the time of the transactions at issue in this matter.

Respondent Jackson stated that he never consented to arbitration or submitted himself to the jurisdiction of the NASD. It was also stated by Respondent Jackson that he is not presently registered with the NASD, nor was he registered with the NASD during the time period of the alleged dealings with the Claimants.

RELIEF REQUESTED

Claimants requested the following relief:

- Damages equal to the amount invested in InnoPet, ChinaWire and Voices, i.e., \$218,000 as to the Wittenbergs and \$50,000 as to Ms. Black.
- Punitive damages equal to double the compensatory damages.
- Pre and post-judgment interest at 10% per annum.
- costs and attorneys' fees.

Respondents WJ Gallagher and Gallagher prayed that:

1. The Claimants take nothing by way of their Statement of Claim;
2. For an award of costs of suit incurred in this matter;
3. The Arbitration Panel expunge this matter from the CRD records of William J. Gallagher and W. J. Gallagher & Company; and
4. For such other and further relief as the Arbitration Panel may deem just and proper.

Sione Tangen requested that he be dismissed from this matter.

Glenn Jackson requested that he be dismissed from this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

Respondents William J. Gallagher, Glenn Jackson and Sione Tangen did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

By letter dated June 12, 2000, the parties were provided a copy of the following Order of the Panel stating:

The Arbitration Panel, having considered the Motions to Dismiss and Motion to Enforce Panel's Discovery and Case Management Orders, enters the following Orders:

1. The Motion to Dismiss of Respondent Sione Tangen is entered and continued to the hearing date of June 15-16, 2000.
2. The Motion to Dismiss of Respondent Glenn Jackson is entered and continued to the hearing date of June 15-16, 2000.
3. Claimants and Respondents are ordered to produce all requested documents or to produced[sic] an executed affidavit that the requested documents do not exist. If any Party fails to produce an existing document, the claim or defense of such Party shall be stricken at the hearing on June 15-16, 2000. The Panel will weigh whether an adverse inference should by[sic] drawn from the failure of a Party to produce a document for any reason.

By letter dated June 14, 2000, the parties were provided a copy of the following Order:

The Arbitration Panel has considered the requests of Respondent Mr. Tangen and Respondent Mr. Jackson to argue their Motions To Dismiss by telephone and to participate in the Hearing by telephone, and hereby orders that:

1. The requests to argue the Motions by telephone are denied. The Panel will determine the merits of the Motions to Dismiss after all evidence is heard.
2. The requests to participate by telephone are denied. In order to have a fair hearing, including the right to confront Parties and Witnesses and to conduct meaningful cross-examination, the Respondents need to be present and to participate in the Hearing.

After considering the testimony, evidence and arguments presented on behalf of the parties, the undersigned Arbitrators have decided to deny the Motions to Dismiss filed on behalf of Respondents Tangen and Jackson.

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 Regulation, Inc. Office of Dispute Resolution (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 W.J. Gallagher & Co., Inc., William J. Gallagher and Glenn Jackson shall be and hereby are jointly and severally liable for and shall pay to Claimants Russ Wittenberg and Margot Wittenberg the sum of \$215,500.00 (**Two Hundred Fifteen Thousand Five Hundred Dollars**) in compensatory damages.
2. Respondents W.J. Gallagher & Co., Inc., William J. Gallagher and Glenn Jackson shall be and hereby are jointly and severally liable for and shall pay to Claimant Nancy Black the sum of \$47,500.00 (**Forty Seven Thousand Five Hundred Dollars**) in compensatory damages.
3. Respondent Sione Tangen shall be and hereby is liable for and shall pay to Claimants Russ Wittenberg and Margot Wittenberg the sum of \$2,500.00 (**Two Thousand Five Hundred Dollars**) in compensatory damages.
4. Respondent Sione Tangen shall be and hereby is liable for and shall pay to Claimant Nancy Black the sum of \$2,500.00 (**Two Thousand Five Hundred Dollars**) in compensatory damages.
5. Interest at the rate of 10% is awarded on the above stated sums as follows:

Wittenbergs:
InnoPet purchase in the amount of \$100,000 from 11/24/95
Voices purchase in the amount of \$75,000 from 1/16/96
ChinaWire purchase in the amount of \$43,000 from 3/8/96

Black:

Voices purchase in the amount of \$50,000 from 1/12/96
6. Respondents W.J. Gallagher & Co., Inc., William J. Gallagher and Glenn Jackson shall be and hereby are jointly and severally liable and shall pay to Claimants Russ Wittenberg and Margot Wittenberg and Nancy Black the sum of \$32,979.00 (**Thirty Two Thousand Nine Hundred Seventy Nine Dollars**) as attorneys fees incurred prior to the hearing dates of June 15, 2000 and June 16, 2000. In addition to the above stated sum, the above stated Respondents shall be responsible for reasonable

attorneys fees incurred for the hearing conducted on June 15, 2000 and June 16, 2000 as set forth in an Affidavit of Fees to be submitted to Respondents by Mr. Himelrick.

7. Respondents W.J. Gallagher & Co., Inc., William J. Gallagher and Glenn Jackson shall be and hereby are jointly and severally liable and shall pay to Claimants Russ Wittenberg and Margot Wittenberg and Nancy Black the sum of \$7,500.00 (**Seven Thousand Five Hundred Dollars**) as reimbursement for expert witness fees. In addition, the above stated Respondents shall also be responsible for the reasonable hotel (lodging) and airfare expenses incurred by the expert witness.
8. 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.
9. 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 Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is W.J. Gallagher & Company, Inc.

Member surcharge = \$2,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

May 4 and 5, 2000, adjournment requested by W.J. Gallagher & Company, Inc. = \$1,200.00

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:

One (1) Pre-hearing session(s) with Panel x \$1,200.00 = \$1,200.00

Pre-hearing conference(s): Date 1 session

Four (4) Hearing sessions x \$1,200.00 = \$4,800.00

Hearing Date(s): June 15, 2000 2 sessions

June 16, 2000 2 sessions

Total Forum Fees = \$6,000.00

The Arbitration Panel has assessed \$6,000.00 of the forum fees jointly and severally to W.J. Gallagher & Company, Inc., William J. Gallagher and Glenn Jackson.

Fee Summary

Claimants, Russ & Margo Wittenberg and Nancy Black, shall be and hereby are jointly and severally liable for:

Initial Filing Fee = \$ 375.00

Forum Fees = \$ 0.00

Total Fees = \$ 375.00

Less payments = \$1,575.00

Balance to be refunded by NASD Regulation, Inc. = \$1,200.00

Respondent, W.J. Gallagher & Company, Inc., shall be and hereby is liable for:

Member Fees = \$6,100.00

Adjournment Fee = \$1,200.00

Total Fees = \$7,300.00

Less payments = \$1,200.00

Balance Due NASD Regulation, Inc. = \$6,100.00

Respondents, W.J. Gallagher & Company, Inc., William J. Gallagher and Glenn Jackson shall be and hereby are jointly and severally liable for:

Forum Fees

= \$6,000.00

Balance Due NASD Regulation, Inc.

= \$6,000.00

All balances are due to NASD Regulation, Inc.

Dated:

/s/ Quinton F. Seamons

July 31, 2000

Quinton F. Seamons, Esq.
Public Arbitrator, Presiding Chair

/s/ Sara Jo Dew

July 14, 2000

Sara Jo Dew
Public Arbitrator

/s/ Richard A. Foster

July 14, 2000

Richard A. Foster
Industry Arbitrator

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Forum Fees

Balance Due NASD Regulation, Inc.

= \$6,000.00= \$6,000.00

All balances are due to NASD Regulation, Inc.

QUINTON F. SEAMONS

Quinton F. Seamons, Esq.

Public Arbitrator, Presiding Chair

Dated:

July 31, 2000Sara Jo Dew

Public Arbitrator

Richard A. Foster

Industry Arbitrator

NASD Regulation, Inc. Office of Dispute Resolution
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Forum Fees

Balance Due NASD Regulation, Inc.

= \$6,000.00

= \$6,000.00

All balances are due to NASD Regulation, Inc.

Dated:

Quinton F. Seamons, Esq.
Public Arbitrator, Presiding Chair

Sara Jo Dew
Sara Jo Dew
Public Arbitrator

7-14-00

Richard A. Foster
Industry Arbitrator

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Forum Fees

Balance Due NASD Regulation, Inc.

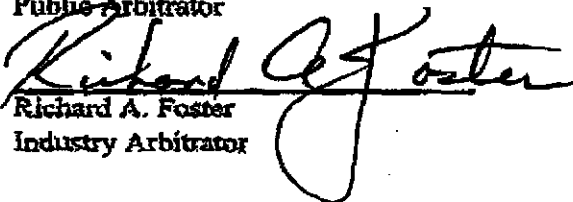
= \$6,000.00= \$6,000.00

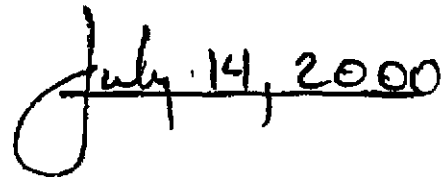
All balances are due to NASD Regulation, Inc.

Dated:

Quinton F. Seamons, Esq.
Public Arbitrator, Presiding Chair

Sara Jo Dew
Public Arbitrator


Richard A. Foster
Industry Arbitrator


July 14, 2000