

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Dale K. Nohre, Individually and as Beneficiary of Dale K. Nohre's IRA, Jo Duncan Nohre, Individually and as Beneficiary of Jo Duncan Nohre's IRA, Kendall R. Nohre, Dale D. Nohre, Zilpha Nohre, Maren E. Mason, Individually and as Beneficiary of Maren E. Mason's IRA, and Elwood H. Mason, Individually and as Beneficiary of Elwood H. Mason's IRA, Claimants v. Stock USA, Inc., James Gerwick, W.J. Gallagher & Company, Inc., Lewis Akmakjian, Ernest B. Arnold, William J. Gallagher, Jr., and Interfirst Capital Corporation, Respondents

Case Number: 99-02935

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants:

Jonathan W. Evans, Esq.
Jonathan W. Evans & Associates
Los Angeles, California

For Respondents Stock USA, Inc. and James Gerwick:

Jeffrey S. Kob, Esq. and
Cynthia M. Schleindl, Esq.
Miller, Milove & Kob
San Diego, California

For Respondents W.J. Gallagher & Company, Inc.
and William J. Gallagher:

Stephen Acker, Esq.
Acker, Kowalick & Whipple, APC
Los Angeles, California

For Respondent Interfirst Capital Corporation:

Jodi S. Cohen, Esq.
Keesal Young & Logan
Long Beach, California

For Respondent Ernest B. Arnold

Ernest B. Arnold
In Pro Per
Pasadena, California

For Respondent Lewis Akmakjian

Lewis Akmakjian
In Pro Per
Burbank, California

CASE INFORMATION

Statement of Claim filed: June 21, 1999

First Amended Statement of Claim filed: October 21, 1999

Claimants Dale K. Nohre and Jo Duncan Nohre's Uniform Submission Agreement signed: June 17, 1999

Claimant Dale D. Nohre's Uniform Submission Agreement signed: April 17, 1999

Claimant Kendall R. Nohre's Uniform Submission Agreement signed: April 17, 1999

Claimant Zilpha Nohre's Uniform Submission Agreement signed: April 17, 1999

Claimant Elwood H. and Maren E. Mason's Uniform Submission Agreement signed: June 17, 1999

Joint Statement of Answer filed by Respondents Stock USA, Inc. and James Gerwick: August 30, 1999

Joint Statement of Answer filed by Respondents Stock USA, Inc. and James Gerwick to Claimants' First Amended Statement of Claim: November 18, 1999

Joint Statement of Answer filed by Respondents W.J. Gallagher & Company, Inc., Lewis Akmakjian, Ernest B. Arnold, William J. Gallagher, Jr.: August 25, 1999

Respondent Stock USA, Inc.'s Uniform Submission Agreement signed: September 3, 1999

CASE SUMMARY

Claimants alleged negligence, fraud, deceit, omission of material fact, suitability, breach of fiduciary duty, violation of the Securities Exchange Act of 1934, failure to supervise, and violation of NASD Rules and Regulations in connection with margined purchases and sales of Starwood Hotel and Resorts (HOT) and other securities.

Respondents Stock USA, Inc. and James Gerwick denied the allegations of wrongdoing set forth in the Claimants' original and amended Statements of Claim.

Respondents W.J. Gallagher & Company, Inc., Lewis Akmakjian, Ernest B. Arnold, William J. Gallagher, Jr. denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$291,600.00 in compensatory damages, disgorgement of commissions, lost opportunity costs, interest, punitive damages, costs and attorney's fees.

Respondents Stock USA, Inc. and James Gerwick requested dismissal of the Claimants' original and amended Statements of Claim in their entirety.

Respondents W.J. Gallagher & Company, Inc., Lewis Akmakjian, Ernest B. Arnold, and William J. Gallagher, Jr. requested dismissal of the Claimants' Statement of Claim in its entirety. Respondents also sought an award of costs and expungement of this matter from their records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents William J. Gallagher, Jr., Lewis Akmakjian, Ernest B. Arnold, and James Gerwick did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondent Interfirst Capital Corporation did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure and having answered the claim is bound by the determination of the Panel on all issues submitted.

On October 3, 2000, Claimants dismissed Respondent Interfirst Capital Corporation without prejudice.

On December 8, 2000, during the hearing, the Panel dismissed Respondents Stock USA, Inc. and James Gerwick with prejudice.

On January 26, 2001, the Panel denied Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, Lewis Akmakjian, and Ernest B. Arnold's motions to dismiss.

Claimants' motion to amend the pleadings to conform to the proof offered at the time of the hearing was granted. The Panel determined that the amendment would not have any effect on the amount of fees assessed by the Panel.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented during the seven full days of the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, Jr. and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Dale K. Nohre, Individually and as Beneficiary of Dale K. Nohre's IRA, Jo Duncan Nohre, Individually and as Beneficiary of Jo Duncan Nohre's IRA, Kendall R. Nohre, Dale D. Nohre, and Zilpha Nohre the sum of \$78,000.00 in compensatory damages and interest inclusive to date.
- 2) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, Jr., and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Dale K. Nohre, Individually and as Beneficiary of Dale K. Nohre's IRA, Jo Duncan Nohre, Individually and as Beneficiary of Jo Duncan Nohre's IRA, Kendall R. Nohre, Dale D. Nohre, and Zilpha Nohre the sum of \$60,000.00 in punitive damages pursuant to California Civil Code §3294(a).
- 3) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, Jr., and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Dale K. Nohre, Individually and as Beneficiary of Dale K. Nohre's IRA, Jo Duncan Nohre, Individually and as Beneficiary of Jo Duncan Nohre's IRA, Kendall R. Nohre, Dale D. Nohre, and Zilpha Nohre the sum of \$6,900.00 in expert witness fees.
- 4) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, Jr., and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Dale K. Nohre, Individually and as Beneficiary of Dale K. Nohre's IRA, Jo Duncan Nohre, Individually and as Beneficiary of Jo Duncan Nohre's IRA, Kendall R. Nohre, Dale D. Nohre, and Zilpha Nohre the sum of \$225 in reimbursement for the cost of filing the Statement of Claim.
- 5) Respondent Ernest B. Arnold is liable to and shall pay Claimants Dale K. Nohre, Individually and as Beneficiary of Dale K. Nohre's IRA, Jo Duncan Nohre, Individually and as Beneficiary of Jo Duncan Nohre's IRA, Kendall R. Nohre, Dale D. Nohre, and Zilpha Nohre the sum of \$2,000.00 in compensatory damages and interest inclusive to date.
- 6) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Maren E. Mason, Individually and as Beneficiary of Maren E. Mason's IRA, and Elwood H. Mason, Individually and as Beneficiary of Elwood H. Mason's IRA the sum of \$26,500.00 in compensatory damages and interest inclusive to date.

- 7) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Maren E. Mason, Individually and as Beneficiary of Maren E. Mason's IRA, and Elwood H. Mason, Individually and as Beneficiary of Elwood H. Mason's IRA the sum of \$20,000.00 in punitive damages pursuant to California Civil Code §3294(a).
- 8) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Maren E. Mason, Individually and as Beneficiary of Maren E. Mason's IRA, and Elwood H. Mason, Individually and as Beneficiary of Elwood H. Mason's IRA the sum of \$2,300.00 in expert witness fees.
- 9) Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, and Lewis Akmakjian, are jointly and severally liable to and shall pay Claimants Maren E. Mason, Individually and as Beneficiary of Maren E. Mason's IRA, and Elwood H. Mason, Individually and as Beneficiary of Elwood H. Mason's IRA the sum of \$75 in reimbursement for the cost of filing the Statement of Claim.
- 10) Respondent Ernest B. Arnold is liable to and shall pay Claimants Maren E. Mason, Individually and as Beneficiary of Maren E. Mason's IRA, and Elwood H. Mason, Individually and as Beneficiary of Elwood H. Mason's IRA the sum of \$1,000.00 in compensatory damages.
- 11) Each party shall bear its own costs except where provided otherwise in this award.
- 12) Each party shall bear its own attorney's fees.
- 13) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Stock USA, Inc.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Stock USA, Inc. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 14) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James Gerwick's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent James Gerwick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 15) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

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| Initial claim filing fee | = \$ 300.00 |
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the event of the dispute. The member firm Stock USA, Inc. is a party and the following fees are assessed:

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|----------------------------|---------------|
| Member Surcharge | = \$ 1,500.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | = \$ 2,500.00 |
| Total Member Fees | = \$ 4,600.00 |

The member firm W.J. Gallagher & Company, Inc. is a party and the following fees are assessed:

| | |
|----------------------------|---------------|
| Member Surcharge | = \$ 1,500.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | = \$ 2,500.00 |
| Total Member Fees | = \$ 4,600.00 |

The member firm Interfirst Capital Corporation is a party and the following fees are assessed:

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|----------------------------|---------------|
| Member Surcharge | = \$ 1,500.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | = \$ 2,500.00 |
| Total Member Fees | = \$ 4,600.00 |

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

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| (2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session | = \$ 900.00 |
| Pre-hearing conferences: March 24, 2000 1 session | |
| May 10, 2000 1 session | |
| (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session | = \$ 2,250.00 |
| Pre-hearing conferences: February 2, 2000 1 session | |
| February 8, 2000 1 session | |
| (15) Hearing sessions @ \$1,125.00/session | = \$ 16,875.00 |
| Hearings: December 4, 2000 2 sessions | |
| December 5, 2000 2 sessions | |
| December 6, 2000 2 sessions | |
| December 7, 2000 2 sessions | |
| December 8, 2000 3 sessions | |
| December 9, 2000 2 sessions | |
| January 26, 2001 2 sessions | |
| Total Forum Fees | = \$ 20,025.00 |

The Panel assessed \$ 20,025.00 of the forum fees jointly and severally to Respondents W.J. Gallagher & Company, Inc., William J. Gallagher, Jr., and Lewis Akmakjian.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

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| Respondent W.J. Gallagher requested copies of the audio-tape hearing transcripts 10 tapes @ \$15.00/tape: | = \$ 150.00 |
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Fee Summary

1. Claimants, Dale K. Nohre, Jo Duncan Nohre, Dale D. Nohre, Kendall R. Nohre, Zilpha Nohre, Maren E. Mason, and Elwood H. Mason are charged jointly and severally with the following fees and costs:

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|----------------------|-----------------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Less Payments</u> | <u>= \$(2,850.00)</u> |
| Refund Due Claimants | = \$(2,550.00) |

2. Respondent Stock USA, Inc. is charged with the following fees and costs:

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|---|-----------------------|
| Member Fees | = \$ 4,600.00 |
| <u>Less Payments</u> | <u>= \$(4,600.00)</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00 |

3. Respondent W.J. Gallagher, Inc. is charged with the following fees and costs:

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|---|-----------------------|
| Member Fees | = \$ 4,600.00 |
| <u>Administrative Costs</u> | <u>= \$ 150.00</u> |
| Total Fees | = \$ 4,750.00 |
| <u>Less Payments</u> | <u>= \$(1,550.00)</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 3,200.00 |

4. Respondent Interfirst Capital Corporation is charged with the following fees and costs:

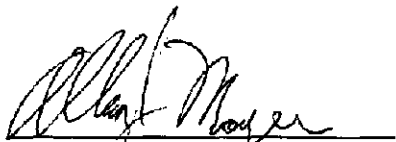
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| Member Fees | = \$ 4,600.00 |
| <u>Less Payments</u> | <u>= \$ (600.00)</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 4,000.00 |

5. Respondents, W.J. Gallagher & Company, Inc., William J. Gallagher, Jr., and Lewis Akmakjian, are charged jointly and severally with the following fees and costs:

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|---|-----------------------|
| <u>Forum Fees</u> | <u>= \$ 20,025.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 20,025.00 |

All balances are payable to NASD Dispute Resolution, Inc. and are to be paid immediately upon the receipt of the award by the parties pursuant to Rule 10330(g) of the Code.

Concurring Arbitrators' Signatures



Allan J. Mayer, Esq.
Chair, Public Arbitrator

1/26/2001
Signature Date



Melvin S. Feldman, Esq.
Public Arbitrator

1-26-01
Signature Date



Mary K. Foust
Non-Public Arbitrator

1-26-01
Signature Date

1-29-01
Date of Service