

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Elizabeth and Francis Colombo, (Claimants) vs. The Stamford Company, Inc., Bartholomew A. DeCicco, Richard F. Fletcher, Franco Desideri, Robert J. Figliozzi, Gabriel M. Bernaschina, and Vincent R. Drohan, (Respondents)

Case Number: 99-04452

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Elizabeth and Francis Colombo, hereinafter collectively referred to as "Claimants":
Thomas P. Hinchey, Yorktown Heights, NY.

Respondent, The Stamford Company, Inc. ("Stamford"), did not make an appearance in this matter.

Respondent, Bartholomew A. DeCicco ("DeCicco"), appeared *pro se*.

Respondent, Richard F. Fletcher ("Fletcher"), appeared *pro se*.

Respondent, Franco Desideri ("Desideri"), did not appear at the hearings in this matter.
Previously represented by: Jordan W. Siev, Esq., Anderson Kill & Olick, P.C., New York, NY.

Respondent, Robert J. Figliozzi ("Figliozzi"), appeared *pro se*.

Respondent, Gabriel M. Bernaschina ("Bernaschina"), appeared *pro se*.

Respondent, Vincent R. Drohan ("Drohan"), appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: September 29, 1999.

Response to Figliozzi's Statement of Answer filed by Claimants on or about: July 29, 2000.

Response to Bernaschina's Motion to Dismiss filed by Claimants on or about: October 3, 2000.

Response to Drohan's Motion to Dismiss filed by Claimants on or about: October 3, 2000.

Response to the Panel's Request to Review Statute of Limitations filed by Claimants on or about: January 8, 2001.

Claimants signed the Uniform Submission Agreement.

Stamford did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by DeCicco on or about: July 18, 2000.

Response to the Panel's Request to Review Statute of Limitations filed by DeCicco on or about: January 8, 2001.

DeCicco signed the Uniform Submission Agreement: July 18, 2000.

Fletcher did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by Desideri on or about: August 11, 2000.

Response to the Panel's Request to Review Statute of Limitations filed by Desideri on or about: January 8, 2001.

Desideri signed the Uniform Submission Agreement: August 7, 2000.

Statement of Answer filed by Figliozi on or about: June 8, 2000.

Response to the Panel's Request to Review Statute of Limitations filed by Figliozi on or about: December 29, 2000.

Figliozi signed the Uniform Submission Agreement: June 7, 2000.

Statement of Answer and Motion to Dismiss filed by Bernaschina on or about: September 8, 2000.

Response to the Panel's Request to Review Statute of Limitations filed by Bernaschina on or about: January 9, 2001.

Bernaschina did not sign a Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Drohan on or about: August 2, 2000.

Response to the Panel's Request to Review Statute of Limitations filed by Drohan on or about: January 4, 2001.

Drohan signed the Uniform Submission Agreement: July 22, 2000.

CASE SUMMARY

Claimants asserted the following causes of action: fraudulent inducement; breach of fiduciary duty; breach of contractual obligations and professional duties; excessive trades; unauthorized and discretionary trades; unsuitability; common law fraud; violations of Federal and State Securities Laws; misrepresentations and omissions of material facts; failure to supervise; control person liability; violations of Federal and State criminal laws, including mail fraud, wire fraud, and RICO; and violations of the Rules and Regulations of the NASD, Inc., the New York Stock Exchange, and the Chicago Board Options Exchange. Claimants' claim involved investments in MFS Multimarket Income Trust, DCX, Inc., Camelot Corporation, Polydex Pharmaceuticals, Ltd., and American Cascade Energy, Inc.

Unless specifically admitted in his Answer, DeCicco denied the allegations made in the Statement of Claim and asserted the following defenses: DeCicco did not supervise Claimants' broker of record during the period of alleged wrongdoing; DeCicco did not receive any oral or written complaints from Claimants during the period of time in dispute; DeCicco has never had any customer or regulatory complaints logged against him in over 40 years in the securities industry; there is no basis for DeCicco to ever enter into a situation whereby he would perpetrate fraudulent, deceitful, or manipulative practices against anyone; and Claimants' claims are barred by the Statute of Limitations.

Unless specifically admitted in his Answer, Desideri denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to set forth any allegations against Desideri; Claimants' claims are time-barred by the applicable Statute of Limitations and by the NASD's six-year eligibility rule; and Claimants' claims are barred by the doctrine of laches.

Unless specifically admitted in his Answer, Figliozzi denied the allegations made in the Statement of Claim and asserted the following defenses: Figliozzi had no dealings, directly or indirectly, with Claimants' account during the period of time in question; Figliozzi was never aware of any complaint by Claimant while he was employed by Stamford; Figliozzi has been named as a party to this arbitration solely because he was a principal of Stamford; Figliozzi has never been found in violation of any rule or regulation of the NASD and/or any other regulatory body during a career spanning over 35 years; Claimants' claims are barred by the Statute of Limitations and by Rule 10304 of the NASD Code of Arbitration Procedure; the allegations in the Statement of Claim, as they pertain to Figliozzi, are totally vague as to specific times, acts and/or omissions; and Claimants' claims are barred by the doctrine of laches.

Unless specifically admitted in his Answer, Bernaschina denied the allegations made in the Statement of Claim and asserted the following defenses: at no time was Bernaschina ever involved with operations and compliance, nor did he ever have any dealings, directly or indirectly, with any customers; Bernaschina has never been found to be in violation of any rule, regulation, or statute of the SEC, self-regulatory organizations, or any state, throughout his career in the securities industry, which began in 1964; and Claimants' claims are barred by the Statute of Limitations and by the NASD's six-year eligibility rule.

Unless specifically admitted in his Answer, Drohan denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim makes no specific claim against Drohan; Drohan did not supervise Claimants' broker of record at any time; Claimants' broker is deceased and cannot either defend himself or aid in Drohan's defense; Claimants' claim appears to have been made outside the time limiting its filing, six years from the time of the alleged occurrence; Drohan has been employed in the stock brokerage industry for over 48 years without a blemish to his record; and Claimants' claims have been brought to extort payment from persons listed in Stamford's broker dealer registration as regulatory designated control persons, and has absolutely no merit.

RELIEF REQUESTED

Claimants requested:

- a. Treble RICO damages of \$1,000,000.00, such damages being awarded to compensate Claimants for their actual monetary losses, their emotional damages, to punish Respondents for their wrongful conduct, and to deter Respondents from engaging in such conduct in the future;
- b. Pre-judgment interest;
- c. Costs, expenses, and disbursements in the approximate amount of \$7,500.00; and
- d. Such other relief as the Panel deems just and proper.

In the alternative, Claimants requested:

- a. Wrongfully collected brokers commissions in the amount of \$30,954.00;
- b. Capital losses on securities in the amount of \$135,000.00;
- c. Lost interest income calculated at the New York State legal interest rate of 9%, and adjusted for withdrawals, in the amount of \$27,100.00;
- d. Attorneys' fees;
- e. Pre-judgment interest;
- f. Punitive damages in the amount of \$1,000,000.00;
- g. Costs, expenses and disbursements in the approximate amount of \$7,500.00; and
- h. Such other relief as the Panel deems just and proper.

DeCicco requested that the Panel dismiss Claimants' claims in their entirety.

Desideri requested that this action be dismissed and that he be awarded his attorneys's fees.

Figliozzi requested that the Panel dismiss Claimants' claims in their entirety.

Bernaschina requested that the Panel dismiss Claimants' claims in their entirety.

Drohan requested that the Panel dismiss Claimant's claims in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Desideri passed away prior to the hearings in this matter.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Stamford has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Stamford present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Stamford, Fletcher, and Bernaschina did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted to the Code and are bound by the determination of the Panel on all issues submitted to the Code.

During the hearings in this matter, Respondents made a motion to dismiss based upon the Statute of Limitations. The Panel denied said motion.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. DeCicco be and hereby is solely liable for and shall pay to Claimants the sum of \$16,011.79 as compensatory damages. The basis of the Award is the Respondents' failure to supervise, lack of supervision, breach of fiduciary duty, and unsuitability of investments in Claimants' account.
2. Fletcher be and hereby is solely liable for and shall pay to Claimants the sum of \$10,011.79 as compensatory damages. The basis of the Award is the Respondents' failure to supervise, lack of supervision, breach of fiduciary duty, and unsuitability of investments in Claimants' account.

3. Figliozzi be and hereby is solely liable for and shall pay to Claimants the sum of \$16,011.79 as compensatory damages. The basis of the Award is the Respondents' failure to supervise, lack of supervision, breach of fiduciary duty, and unsuitability of investments in Claimants' account.
4. Bernaschina be and hereby is solely liable for and shall pay to Claimants the sum of \$16,011.79 as compensatory damages. The basis of the Award is the Respondents' failure to supervise, lack of supervision, breach of fiduciary duty, and unsuitability of investments in Claimants' account.
5. Drohan be and hereby is solely liable for and shall pay to Claimants the sum of \$16,011.79 as compensatory damages. The basis of the Award is the Respondents' failure to supervise, lack of supervision, breach of fiduciary duty, and unsuitability of investments in Claimants' account.

6. Claimants' request for punitive damages is hereby denied.

7. All other requests for relief are hereby denied.

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 = \$ 500.00

Forum Fees and Assessments

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

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

Pre-hearing conference: December 13, 2000 1 session

Fourteen (14) Hearing sessions x \$1,200.00 = \$16,800.00

Hearing Dates: May 11, 2001 2 sessions
May 23, 2001 2 sessions
June 6, 2001 2 sessions
July 2, 2001 2 sessions

	July 3, 2001	2 sessions
	July 13, 2001	2 sessions
Total Forum Fees		= \$18,000.00

1. The Panel has assessed \$3,600.00 of the forum fees against DeCicco.
2. The Panel has assessed \$3,600.00 of the forum fees against Fletcher.
3. The Panel has assessed \$3,600.00 of the forum fees against Figliozzi.
4. The Panel has assessed \$3,600.00 of the forum fees against Bernaschina.
5. The Panel has assessed \$3,600.00 of the forum fees against Drohan.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, without charge, copies of a transcript, and security.

1. Claimants, requested tapes, \$225.00.

2. Drohan, requested tapes, \$125.00.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Administrative Costs	= \$ 225.00
Total Fees	= \$ 725.00
Less payments	= \$1,700.00
Refund Due Claimant	= \$ 975.00

2. DeCicco be and hereby is solely liable for:

Forum Fees	= \$3,600.00
Total Fees	= \$3,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

3. Fletcher be and hereby is solely liable for:

Forum Fees	= \$3,600.00
Total Fees	= \$3,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

4. Figlioizzi be and hereby is solely liable for:

<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees</u>	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$3,600.00

5. Bernaschina be and hereby is solely liable for:

<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees</u>	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$3,600.00

6. Drohan be and hereby is solely liable for:

<u>Forum Fees</u>	= \$3,600.00
<u>Administrative Costs</u>	= \$ 125.00
<u>Total Fees</u>	= \$3,725.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$3,725.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Anne-Marie M. Kunzler	-	Public Arbitrator, Presiding Chair
Dawn M. Cardi, Esq.	-	Public Arbitrator
Harry Aronsohn	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

AM Kunzler

Anne-Marie M. Kunzler
Public Arbitrator, Presiding Chair

11/28/01

Signature Date

Anne-Marie M. Kunzler
Public Arbitrator, Presiding Chair

Dawn M. Cardi, Esq.
Public Arbitrator

Signature Date

Dawn M. Cardi, Esq.
Public Arbitrator

Harry Aronsohn
Industry Arbitrator

Signature Date

November 29, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Public Arbitrator, Presiding Chair

Signature Date Anne-Marie M. Kunzler
Public Arbitrator, Presiding



Dawn M. Cardi, Esq.
Public Arbitrator

11/27/01

Signature Date Dawn M. Cardi, Esq.

Harry Aronsohn
Industry Arbitrator

Signature Date

November 29, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Public Arbitrator, Presiding Chair

Dawn M. Cardi, Esq.
Public Arbitrator

Signature Date Dawn M. Cardi, Esq.

Harry Aronsohn
Industry Arbitrator

11/29/2001
Signature Date

November 29, 2001
Date of Service (For NASD office use only)