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Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Jeffrey Bollman, Claimant

vs.

Fletcher & Faraday, Inc., Ben Wilson, Paul McGlyn, Kirk Graham, and Yury Sapir,
Respondents

Case Number: 00-01535

Hearing Site: Indianapolis, Indiana

REPRESENTATION OF PARTIES

Claimant Jeffrey Bollman ("Bollman") was represented by Andrew Stoltman, Esq. of the firm of Maddox Koeller Hargett & Caruso located in Indianapolis, Indiana.

Respondents Fletcher & Faraday, Inc. ("F & F") and Kirk Graham were represented by John E. MacDonald, Esq. of the firm of Stark & Stark, located in Princeton, New Jersey. Respondents Ben Wilson ("Wilson"), Paul P. McGlyn ("McGlyn"), and Yury Sapir ("Sapir") did not appear at hearing.

CASE INFORMATION

Statement of Claim filed on or about: April 18, 2000

Claimant Bollman signed the Uniform Submission Agreement: April 4, 2000

Statement of Answer filed by Respondents F & F, Wilson, McGlyn, Graham, and Sapir on or about: November 6, 2000.

Amended Statement of Answer filed by Respondents F & F and Graham on or about: November 6, 2000.

Respondents F & F, Wilson, McGlyn, Graham and Sapir did not file signed Uniform Submission Agreements.

CASE SUMMARY

Claimant Bollman made the following allegations against Respondents: unauthorized trading, misrepresentation and omissions; negligence; failure to supervise; breach of contract; common law fraud; and violation of the NASD's Conduct Rules. The causes of

action resulted from recommended purchases and unauthorized transactions involving several common stocks.

Unless specifically admitted in its Answer, Respondents F & F, Wilson, McGlyn, Graham, and Sapir denied the allegations made in the Statement of Claim and asserted the following defenses:

- 1) The Statement of Claim fails to state a claim upon which relief may be granted;
- 2) Claimant directed, approved and authorized each and every transaction in its account;
- 3) Claimant ratified each and every transaction in its account;
- 4) Claimant is estopped from asserting any claims with respect to the transactions made in the account;
- 5) Claimant failed to mitigate any alleged damages;
- 6) Any alleged losses which may have occurred were the direct result of market conditions and other factors beyond the control of Respondents;
- 7) All transactions recommended to and made for or on behalf of Claimant were suitable for and in accordance with its investment objectives and financial condition;
- 8) There was no fiduciary duty owed to Claimant by Respondent as a matter of law, or under the circumstances of this case;
- 9) Any duties owed by Respondents to Claimant were fully and faithfully carried out;
- 10) Claimant is barred from recovery because it directly instructed, directed, authorized and consented to the transactions in question;
- 11) The investments in Claimant's account were suitable;
- 12) Respondents did not act with intent to defraud claimant or with reckless disregard of its interests;
- 13) There were no misrepresentations or omissions of material fact upon which Claimant relied to its detriment;
- 14) Claimant waived the claims asserted herein;
- 15) Claimant is barred, in whole or in part, from raising the claims asserted herein by the doctrines of ratification and affirmance or acquiescence in the conduct alleged;
- 16) Claimant's account was not "churned" as a matter of law or as a matter of fact;
- 17) Claimant's claims are barred, in whole or in part, by the applicable statutes of limitation;
- 18) At all times material herein, Claimant knew and was aware of the risks associated with its investments and voluntarily chose to assume those risks. As such, Claimant is barred and estopped from recovery. The risks which claimant assumed were the direct and proximate result of its losses, if any;
- 19) Claimant did not reasonably rely on any matters, statements or omissions attributable to respondents;

20) Any claims Claimant might have against Respondents are barred because claimant:

- a) had full access and an ability to inquire and failed to exercise due diligence or reasonable care;
- b) knew, or in the exercise of the required degree of care and due diligence, should have known, of the exercise of those matters alleged to constitute violations of law that formed his claims;
- c) acted in willful or reckless disregard of those facts and matters alleged to constitute violations or causes of action by having taken benefits under the agreements and contracts complained of;
- d) ratified or acquiesced in some or all of the matters alleged to constitute violations or claims;
- e) unjustifiably relied on any alleged misrepresentations; and
- f) failed to mitigate damages;

21) Respondents are not liable to Claimant because it had no duty, contractual or otherwise, to disclose or inform Claimant of any facts other than those which were disclosed, nor did Respondents breach any duty owed to claimant, if such a duty existed;

22) Respondents' actions are not the proximate cause of claimant's alleged damages; and,

23) To the extent any losses or diminution in the value of Claimant's account has occurred, such losses were the result of unforeseen market fluctuations and were within the risks assumed.

RELIEF REQUESTED

Claimant Bollman requested compensatory damages of approximately \$41,270.00; punitive damages; statutory interest; lost interest; pre- and post-award interest at the statutory rate; treble damages for violation of the Indiana Civil Theft Statute; and attorney's fees, other costs and expenses as provided by the Indiana Securities Act.

Respondents requested that the claim be dismissed, that they be awarded their costs and expenses incurred in defending the claim; and such other relief as was just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents F & F, Wilson, McGlyn, Graham and Sapir did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Arbitration Panel on all issues submitted.

Upon review of the file and the representations made on behalf of the Claimant, the Arbitrators determined that Respondents Wilson, McGlyn and Sapir were properly served with due notice of the hearing, and that arbitration of the matter would proceed without these Respondents present, in accordance with the NASD-DR Code of Arbitration Procedure (the "Code").

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. Respondents Fletcher & Faraday, Inc., Ben Wilson, Paul McGlyn, Kirk Graham, and Yury Sapir are jointly and severally liable for and shall pay to Claimant Jeffrey Bollman the sum of \$40,807.00 as compensatory damages, plus interest in the sum of \$10,328.00, for a total of \$51,135.00. In addition, interest shall continue accruing at the rate of 8% per annum from the date of May 2, 2001 until the award is paid in full;
2. In addition, Respondents Fletcher & Faraday, Inc., Ben Wilson, Paul McGlyn, Kirk Graham, and Yury Sapir are jointly and severally liable for and shall pay to Claimant Jeffrey Bollman the sum of \$13,466.00 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well as the pleadings and briefs filed on their behalf, and determined that authority existed for an award of attorneys' fees to the Claimant, Jeffrey Bollman;
3. The claims for punitive damages are denied;
4. Except as specified otherwise herein, each party shall bear its own costs, including any additional attorney's fees; and,
5. Any and all relief not specifically addressed herein is 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	= \$175.00
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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 a party.

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,000.00

Adjournment Fees

Adjournments requested during these proceedings: None

Forum Fees and Assessments

The panel has the authority to assess 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:

Two (2) Pre-hearing sessions with Panel x \$600.00	= \$ 1,200.00
Pre-hearing conferences:	
September 26, 2001	1 session
February 14, 2001	1 session
Two (2) Hearing sessions x \$600.00	= <u>\$ 1,200.00</u>
Hearing Date:	April 5, 2001
	2 sessions
Total Forum Fees	= \$ 2,400.00

The Panel has assessed the entire \$2,400.00 in Forum Fees to Respondents Fletcher & Faraday, Inc., Ben Wilson, Paul McGlyn, Kirk Graham, and Yury Sapir, jointly and severally.

EEE SUMMARY

Claimant Bollman is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Less payments</u>	= <u>\$ 750.00</u>
Balance Due to Claimant Jeffrey Bollman	= \$ 600.00

Respondent Fletcher & Faraday, Inc. is solely liable for:

Member Fees	= \$2,400.00
<u>Less payments</u>	= <u>\$ 370.00</u>
Balance Due to NASD Dispute Resolution	= \$2,030.00