

AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Gary E. Sommer

NASD Case No.
96-05227

Name of Respondents

Joseph Roberts & Co., Inc.
Anthony Caliendo
Robert B. DiMarco, Jr.
Joseph F. DeSanto

REPRESENTATION

Claimant Gary E. Sommer ("Claimant") was represented by Howard M. Rosenfield, Attorney at Law, Avon, CT

Respondent Joseph Roberts & Co., Inc. ("Joseph Roberts") did not appear.
Respondent Anthony Caliendo ("Caliendo") was represented by Leon B. Lipkin, Esq., New York, NY until he withdrew as counsel for Caliendo at the first hearing session held on May 10, 1999. Thereafter, Caliendo represented himself but did not appear after May 10, 1999.
Robert B. DiMarco, Jr. ("DiMarco") did not appear.
Joseph F. DeSanto ("DeSanto") did not appear.

CASE INFORMATION

Statement of Claim filed: November 18, 1996
Claimant's Amended Statement of Claim filed: April 1, 1998
Claimant's Uniform Submission Agreement signed on: November 19, 1996
Claimant's second Uniform Submission Agreement signed on: August 9, 1999

Caliendo's Statement of Answer was filed: January 29, 1997.
Caliendo did not file a submission agreement.

Robert B. DiMarco, Jr. did not file an answer nor did he file a submission agreement.
Joseph F. DeSanto did not file an answer nor did he file a submission agreement.

HEARING INFORMATION

Pre Hearing Conference Dates/Sessions: August 7, 1997 - one session with the full panel
October 15, 1997 - one session with the chairperson

Hearing Dates/Sessions: May 10, 1999 - one session and June 14, 1999 - one session

Hearing Location: NASD Regulation, Inc., Dispute Resolution Office, New York, NY

CASE SUMMARY

Claimant alleged, among other things, that he suffered damages resulting from the unauthorized trades in Novatek International, Inc. ("Novatek") in his account with Joseph Roberts. Claimant alleged that Caliendo made material misrepresentation regarding Novatek to induce Claimant to purchase this investment. Claimant alleged that Respondents Joseph Robert, Caliendo, DiMarco and DeSanto (hereinafter "Respondents") placed Claimant in unsuitable investments by failing to diversify Claimant's investments and placing Claimant disproportionately in Novatek. Claimant alleged that he was solicited by Joseph Roberts and Caliendo to trade with Respondents which resulted in substantial losses in Claimant's accounts.

Claimant alleged that during the time that Claimant maintained an account with Joseph Roberts and First Southwest Company, that Joseph Roberts registered representatives engaged in numerous fraudulent, unlawful acts and breaches of contractual obligations, including but not limited to engaging in the following practices: a) directing and effecting unauthorized trades in Claimant's account; and, b) failing to supervise, or intentionally improperly supervising, Claimant's accounts and failing to supervise, or intentionally improperly supervising the account executives.

Claimant alleged that the fraud, misrepresentation, unauthorized trades and other unlawful activities set forth above constituted violations by the Respondents of the federal securities law and the applicable state law, breaches of the rules of the New York Stock Exchange, Inc. and the NASD, Inc. Claimant alleged that consequently Respondents breached their contract with Claimant and breached their fiduciary duty that they owed Claimant.

Caliendo in his statement of answer denied all allegations of wrongdoing and specifically maintained that Claimant authorized all purchases of Novatek for Claimant's account. Caliendo maintained that he never guaranteed Claimant's investment in Novatek or any other stock and that he never "advanced" information on Novatek to Claimant. Caliendo asserted,

among other things, the following affirmative defenses: Claimant failed to mitigate his damages; Claimant was a sophisticated investor who assumed the risks of investing in the securities market; Claimant's losses were caused by his own conduct; all risks were properly disclosed to Claimant; any losses that Claimant suffered were the result of market conditions; Caliendo conducted his business in a professional manner and acted in good faith; Claimant, by his own conduct, has waived any claims against Caliendo; Claimant did not rely to his detriment on any action or inaction of Caliendo; and, Claimant's claim for punitive damages is barred by the law of the governing jurisdiction.

No other Respondents filed an answer to the statement of claim or to the amended statement of claim.

REQUESTED RELIEF

Claimant in his amended statement of claim requested the following damages:

- 1) compensatory damages of \$105,584.00 pursuant to the Miley v. Oppenheimer Well Managed Account calculation along with "make whole" award; plus attorney's fees of \$194,684.00 for a total of \$300,268.00.
- 2) pre- and post-award interest.
- 3) punitive damages in such amount as the arbitrators deem appropriate to deter Respondents from future acts of misconduct such as those giving rise to this claim.
- 4) Payment of all of Claimant's costs, expenses and disbursements including reasonable attorney's fees in pursuing this claim.

Caliendo, in his answer, requested that Claimant's claim be dismissed in its entirety and that he be awarded his costs and expenses associated with this arbitration, including reasonable attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On May 5, 1999, Claimant withdrew with prejudice his claim against First Southwest Company. As First Southwest Company is no longer a party, all other references to First Southwest Company were removed from this Award and the case caption.

Claimant, being the only party present at the close of the hearing, agreed to have the Award in this matter executed in counterpart copies and agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc. ("NASD Regulation").

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Anthony Caliendo, Robert B. DiMarco, Jr., and

Joseph F. DeSanto have been properly served with the 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 Anthony Caliendo, Robert B. DiMarco, Jr., and Joseph F. DeSanto have received due notice of the hearing as required under Rule 10315 of the Code and that the arbitration of this matter would proceed pursuant to Rule 10318 of the Code.

Anthony Caliendo, Robert B. DiMarco, Jr., and Joseph F. DeSanto did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submission to arbitration but were required to submit to arbitration pursuant to Rule 10301 of the Code. Caliendo was present through counsel at the hearing held May 10, 1999. Caliendo's counsel requested a postponement of the May 10, 1999 hearing so that Caliendo could have time to hire counsel or represent himself. The panel's ruling on the May 10, 1999 postponement is attached hereto as Exhibit 1. Caliendo having answered the claim, is bound by the determination of the arbitration panel on all issues submitted. DiMarco and DeSanto requested leave to "appear" via telephone. This request was granted but DiMarco and DeSanto did not appear.

Upon review of NASD Regulation's file, the Panel determined that Joseph Roberts was not properly served with the claim and that it did not have notice of the hearing, therefore, Claimant's claim against Joseph Roberts is dismissed without prejudice.

AWARD

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

1. That Respondents Anthony Caliendo, Joseph F. DeSanto and Robert B. DiMarco, Jr. are jointly and severally liable to Claimant Gary E. Sommer for compensatory damages and shall pay to Gary E. Sommer the sum of \$113,050.85; plus six percent (6%) simple interest per annum from November 18, 1996 until June 18, 1999.
2. On the claim of fraud, misrepresentation and unauthorized trading, the panel finds that Claimant was wrongfully defrauded and intentionally misled. The Panel finds that Anthony Caliendo, Joseph F. DeSanto and Robert B. DiMarco are jointly and severally liable to Claimant Gary E. Sommer for punitive damages and shall pay to Gary E. Sommer punitive damages in the amount of \$226,100.00. The panel finds its authority to award punitive damages from Mastrobuono v. Shearson Lehman Hutton, Inc., 114 S.Ct.1212 (1995); Florida and New Jersey Blue Sky Laws; and, NASD Arbitrator's Manual.

3. As stated above all claims against Joseph Robert's are dismissed without prejudice.
4. The parties shall bear their own costs and attorneys' fees, except as Other Costs and Forum Fees are addressed below.
5. Any and all claims for relief not specifically addressed herein are denied in their entirety.

OTHER COSTS

Claimant postponement fee of \$750 for the April 28 and 29, 1998 hearing dates initially assessed against Claimant in the Panel's April 22, 1998 Order is reassessed and shall be paid by Caliendo. Claimant was assessed a postponement fee of \$750 for the postponement of the December 15 and 16, 1998 hearing dates which Claimant has paid. NASD Regulation shall refund to Claimant \$1,000 for his prepayment of his second postponement request.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

(1 pre hearing conference with one arbitrator x \$300) + (1 pre hearing conference with the full panel x \$750) + (2 hearing sessions x \$750) = \$2,550

Forum Fees Assessed Against: Forum Fees in the amount of \$2,550 are jointly and severally assessed against Caliendo, DiMarco and DeSanto. NASD Regulation shall refund to Claimant \$1,500 for his deposits of both his hearing session fee of \$750 and his interim forum fee deposit of \$750.

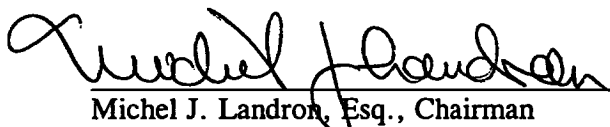
Fees are payable to the NASD Regulation, Inc.

Date Award Signed

Concurring Arbitrators' Signatures

I, Michel J. Landron, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

8/13/99


Michel J. Landron, Esq., Chairman
Public Arbitrator

I, Roy W. Romberger, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

Roy W. Romberger, Panelist
Public Arbitrator

I, William J. Crowe, Jr., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

William J. Crowe, Jr., Esq., Panelist
Industry Arbitrator

Date Award Served by the NASD Regulation:

August 13, 1999

Date Award Signed

Concurring Arbitrators' Signatures

I, Michel J. Landron, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

Michel J. Landron, Esq., Chairman
Public Arbitrator

I, Roy W. Romberger, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

8/10/99

Roy W. Romberger
Roy W. Romberger, Panelist
Public Arbitrator

I, William J. Crowe, Jr., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

William J. Crowe, Jr., Esq., Panelist
Industry Arbitrator

Date Award Served by the NASD Regulation:

August 13, 1999

August 11, 1999

Date Award Signed

I concur in Award
William Crowe, Jr.

Concurring Arbitrators' Signatures

I, Michel J. Landron, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

Michel J. Landron, Esq., Chairman
Public Arbitrator

I, Roy W. Romberger, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

Roy W. Romberger, Panelist
Public Arbitrator

I, William J. Crowe, Jr., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed the instrument which is my Award.

August 11, 1999

William J. Crowe, Jr.

William J. Crowe, Jr., Esq., Panelist
Industry Arbitrator

Date Award Served by the NASD Regulation:

August 13, 1999



NASD Regulation, Inc.

Office of Dispute Resolution
125 Broad Street * 36th Floor * New York, NY 10004-2193 * 212-858-4400 * Fax 212-858-4389
Satellite Office at: 1735 K Street * 4th Floor * NW * Washington, DC 20006-1506 * 202-728-8958 * Fax 202-728-6952

EXHIBIT 1

May 12, 1999

FILE COPY

Subject: NASD Arbitration Number 96-05227
Gary E. Sommer vs. Joseph Roberts & Co., Inc., Anthony Caliendo, First SW Co.,
Robert DiMarco and Joseph DeSanto

Dear :

Attached is a Invoice which lists a fee for the hearing session that occurred on May 10, 1999. Pursuant to Rule 10332(a) of the NASD Code of Arbitration Procedure, the arbitration panel ("Panel") has decided to require you to pay a hearing session deposit in the amount of \$750 to defray the cost Of the hearing on May 10, 1999.

The hearing on May 10, 1999 did begin but the hearing was not completed as your former counsel requested an adjournment on your behalf which was granted. The Panel has determined that the hearing session deposit fee of \$750 must be paid to NASD Regulation, Inc. on or before June 9, 1999. If you fail to pay this fee by June 9, 1999, the Panel will entertain an application to preclude you from presenting any matter, argument or defenses at the hearing.

Should you have any questions regarding this matter, please feel free to contact me at the telephone number referenced below.

Very truly yours,

Shari L. Sturm, Esq.
Senior Attorney
DC/202-728-8958

SLS:SLS:LC70A

lr:1/98

CC Arbitrators: Michel J. Landron, Esq., Chairperson
Mr. Roy W. Romberger, Panelist
William J. Crowe, Jr., Esq., Panelist

CC:

Howard M. Rosenfield, Esq., Gary E. Sommer
Law Office of Howard Rosenfield, 9 Avonwood Road, Avon, CT 06001

RECIPIENTS:

Anthony Caliendo

1499 West Palmetto Park Road, Boca Raton, FL 10017

STATEMENT OF ACCOUNT

Office of Dispute Resolution
 125 Broad Street
 36th Floor
 New York, NY 10004

As of: 05/12/1999

TO: Anthony Caliendo
 1499 West Palmetto Park Road
 Boca Raton, FL 10017

FOR: Anthony Caliendo (AP)
 c/o Bernard, Lee & Edwards Securities
 400 Gulfstream Blvd, Suite 1
 Delray Beach, FL 33444

Invoice#: 96-05227-235-NY

Case Number: 96-05227
 Name: Gary E. Sommer vs. Joseph Roberts & Co., Inc., Anthony
 Caliendo, First SW Co., Robert DiMarco and Joseph DeSanto

Date	Multiple Party	Description	Fees Owed	Credits	Check No.	Check
05/12/1999		Additional Hearing Session Deposit	\$750.00			
Mediation Fee Total:			\$.00			
Arbitration Fee Total:			\$750.00			
Total of Fees:			\$750.00			
Credits To Date:				\$.00		
Credits By Others:				\$.00		
Refunds:				\$.00		
Balance Due:			\$750.00			

Please Make Check Payable to:

NASD Regulation, Inc.
 Office of Dispute Resolution
 125 Broad Street
 36th Floor
 New York, NY 10004

SLS: RF02A

STATEMENT OF ACCOUNT

Office of Dispute Resolution
125 Broad Street
36th Floor
New York, NY 10004

As of: 05/12/1999

Case: 96-05227

GRAND TOTALS	
Mediation Fee Total:	\$.00
Arbitration Fee Total:	\$750.00
Total Fees:	\$750.00
Total Credits To Date:	\$.00
Total Credits By Others:	\$.00
Total Refunds:	\$.00
Total Balance Due:	\$750.00