

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

Anil and Sudha Agarwal

and

97-01842

Omaha, Nebraska

Name of Respondents

Euro-Atlantic Securities, Inc.

James St. Clair, Jr.

Brian Herman

Thomas Fox

David Melillo

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Anil and Sudha Agarwal ("**Claimants**") were represented by Dennis E. Martin, Esq., Dwyer, Smith, Gardner, Lazer, Pohren, Rogers & Forrest, Omaha, Nebraska and Thomas Underwood, Esq., Omaha, Nebraska.

██████████ was ("**██████████**") was represented Stuart D. Meissner, Esq., New York, New York.

David Melillo ("**Melillo**") did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 11, 1997. The Submission Agreement of Claimants, Anil and Sudha Agarwal, was signed on about April 2, 1997. Claimants' Response to the Motion to Dismiss was filed on or about January 9, 2004.

The Statement of Answer was filed by Respondent ██████████ on or about December 4, 1997. The Submission Agreement of Respondent ██████████ was signed on or about November 21, 1997. ██████████ Motion to Dismiss was filed on or about January 9, 2004. ██████████ Motion for Sanctions was filed on or about March 9, 2004. ██████████'s Supplement to the Motion for Sanctions was filed on or about March 11, 2004. ██████████'s Additional Supplement to the Motion for Sanctions was filed on or about March 22, 2004.

Euro-Altantic Securities, Inc. did not file an Answer or a Submission Agreement.

James St. Clair, Jr. did not file an Answer or a Submission Agreement.

Brian Herman did not file an Answer or a Submission Agreement.

Thomas Fox did not file an Answer or a Submission Agreement.

### CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; fraud; breach of fiduciary duty; negligence; unauthorized trading; and conspiracy. The causes of action relate to the order execution of the Hollywood Products Warrants (FILMW) stock.

Claimants specifically stated the following:

On or about February 19, 1997 [REDACTED] purchased 51,000 shares of Hollywood Products Warrants ("FILMW") in the Agarwals' account without their authorization.

A few days thereafter, the Agarwals received a Confirmation/Comparison Statement ("confirm") documenting the securities purchased, trade date, settlement date, and the cost of the transaction from WS Clearing, Inc. ("WS"). The Agarwals were unaware that Hollywood Productions has been identified as a mob-exploited stock.

Unless specifically admitted in his Answer, Respondent [REDACTED] denied the allegations made in the Statement of Claim and asserted the following defenses: The Statement of Claim fails to state a claim upon which relief may be granted; There is a lack of privity between claimants and Respondent [REDACTED] who had no contact with, knowledge of or responsibility for the transactions complained of; The lack of privity between Claimants and Respondent [REDACTED] precludes Claimants from establishing the requisite of loss causation due to any conduct or misconduct of Respondent [REDACTED]; Claimants have approved, authorized and ratified the acts complained of and, accordingly, are precluded from asserting the same as a basis for recovery; Claimants' losses, if any, were the result of Claimants' own conduct; The claims set forth in the Statement of Claim are barred herein because they are presently the subject of a pending Bankruptcy Court proceeding in California; The claims presented by Claimants in the instant proceeding are barred herein; They are fully covered by insurance under the Securities Insurance Investor Protection Corporation, and subrogated to a recovery there under; Based upon the allegations set forth in the Statement of Claim, it appears that Respondent [REDACTED] himself is the victim of fraud; Claimants, by their own conduct, have waived any and all claims which they may have had against [REDACTED]; All risks concerning Claimants' investments were properly disclosed to Claimants, and they knowingly, willingly and voluntarily decided to assume those risks; Claimants did not rely to their detriment on any action or inaction of [REDACTED] or on any act of omission legally attributable to [REDACTED]; Claimants' claims are barred, in whole or in part, by the

doctrine of waiver; Claimants' claims are barred, in whole or in part, by the doctrines of estoppel and laches; Claimants have failed to mitigate their damages; and, Claimants are not entitled to punitive damages as a matter of law and as a matter of fact.

In his Crossclaim against Respondents Euro-Atlantic and David Melillo, Respondent [REDACTED] requests that if it is determined that Respondent [REDACTED] is liable in any degree to Claimants, Respondent [REDACTED] is entitled to be indemnified by Respondents Euro-Atlantic and David Melillo for the amount of that liability.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$158,361.00 as compensatory damages, plus punitive damages in excess of \$500,000.00, attorney's fees, interest, costs and such other further relief as the Arbitrators may deem just and proper.

Respondent [REDACTED] requested that the claims asserted against him be denied in their entirety, plus costs and such other and further relief as is just and proper. In his Crossclaim, Respondent [REDACTED] requested the Panel grant judgment to him over and against Respondents Euro-Atlantic and David Melillo for indemnification for the amount of any sum that may be recovered in this proceeding against him.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents James St. Clair, Jr., Brian Herman, and Thomas Fox were dismissed by the Claimants without prejudice on or about September 3, 1997.

On March 4, 2003, Claimants were advised as follows:

Pleased be advised that Securities Investor Protection Securities, Inc. (SIPC) stepped in to protect customers' accounts maintained at Euro-Atlantic Securities, Inc. As a result, all matters concurring [sic] this party are indefinitely stayed.

At the hearing, the Panel granted Respondent's [REDACTED] Motion to Dismiss made upon completion of Claimants' case. The Panel granted Respondent's [REDACTED] Motion for Sanctions against Claimants.

Any motions not previously decided by the Panel are denied.

At the hearing, there was a dispute as to whether Respondent David Melillo had been served.

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitration have determined that Respondent David Melillo has not been properly served with the

Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Melillo has not received due notice of the hearing as required under Rule 10315 of the Code and that the arbitration of this matter would proceed against Respondent [REDACTED] only pursuant to Rule 10318 of the Code.

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 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. Claimants' claims, each and all, against Respondent [REDACTED] are denied and dismissed with prejudice;
2. Claimants' claims, each and all, against Respondent David Melillo are dismissed without prejudice;
3. Respondent [REDACTED]'s Crossclaim is hereby denied and dismissed with prejudice;
4. Claimants Anil and Sudha Agarwal, are jointly and severally liable for and shall pay to Respondent, [REDACTED], the sum of Two Thousand Five Hundred and No Cents (\$2,500.00) as sanctions. In deciding the monetary award for sanctions, the Panel ruled that it sustained Respondent [REDACTED]'s Motion for Sanctions due to the Claimants' failure to respond to the Panel's previous orders concerning discovery;
5. Claimants, Anil and Sudha Agarwal, are jointly and severally for liable and shall pay to Respondent, [REDACTED] the sum of Two Thousand Five Hundred and No Cents (\$2,500.00) as attorney's fees;
6. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent [REDACTED] registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
7. 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; and,

8. 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 Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$250.00  
Crossclaim filing fee = \$250.00

**Adjournment Fees**

Adjournments requested during these proceedings:

August 13, 2003 Hearing Date, adjournment by [REDACTED] = \$1,000.00  
February 9-13, 2004 Hearing Dates, adjournment by Anil and Sudha Agarwal  
and [REDACTED] (\$500 each party) = \$ 1,000.00

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

2	Pre-hearing sessions with Panel	x	1,000.00	\$	2,000.00
	May 14, 2003	1	Session		
	August 28, 2003	1	Session		
4	Hearing sessions	x	1,000.00		
	May 19, 2004	2	Sessions		2,000.00
	May 20, 2004	2	Sessions		2,000.00
	Total Forum Fees			\$	<u>6,000.00</u>

\* The Arbitration Panel has assessed \$6,000.00 of the forum fees jointly and severally to Anil and Sudha Agarwal.

Fee Summary

Claimants, Anil and Sudha Agarwal shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	250.00
Adjournment Fee	= \$	500.00
<u>Forum Fees</u>	= \$	<u>6,000.00</u>
Total Fees	= \$	6,750.00
<u>Less payments</u>	= \$	<u>-1,250.00</u>
Balance Due NASD Dispute Resolution	= \$	5,500.00

Respondent, [REDACTED] shall be and hereby is liable for:

Crossclaim Filing Fee	= \$	250.00
<u>Adjournment Fees</u>	= \$	<u>1,500.00</u>
Total Fees	= \$	1,750.00
<u>Less payments</u>	= \$	<u>-1,000.00</u>
Balance Due NASD Dispute Resolution	= \$	750.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Wayne S. Rasmussen, Esq. - Public Arbitrator, Presiding Chair  
Thomas J. Tarsney, Esq. - Public Arbitrator  
John R. Lepley, CFP, J.D. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Wayne S. Rasmussen, Esq.

Wayne S. Rasmussen, Esq.  
Public Arbitrator, Presiding Chair

06/04/04

Signature Date

/s/ Thomas J. Tarsney, Esq.

Thomas J. Tarsney, Esq.  
Public Arbitrator

06/02/04

Signature Date

/s/ John R. Lepley, CFP, J.D.

John R. Lepley, CFP, J.D.  
Non-Public Arbitrator

06/03/04

Signature Date

06/07/04

Date of service