

PACIFIC EXCHANGE, INC  
301 Pine Street  
San Francisco, California 94104

RECEIVED

DEC 07 2000

PCX ARBITRATION

In The Matter Of The Arbitration Between:

THOMAS GINGRICH ET AL ,

Claimants

v.

EVEREN SECURITIES ET AL.,

Respondents

PCX CASE #: 00-S005

DECISION

The undersigned Arbitrators, having read and considered the claim submitted by Thomas Gingrich, individually and as trustee of the Gingrich 1989 Living Trust dated 11-28-89 and as trustee of the Gingrich 1992 Living Trust dated 12-09-92 ("Claimant") on February 17, 2000 and the answer of Everen Securities, Randy Bianchi, and Pat Rile ("Respondents"), hereby render the following decision pursuant to Rule 12 of the Rules of the Board of Governors of the Pacific Exchange:

#### REPRESENTATION OF PARTIES

Of Claimants:

James J. Sullivan, Esq.  
*Law Offices of James J. Sullivan*

Of Respondents:

Jesse B. Simpson, Esq.  
*Lewis and Roca, LLP*

#### SUMMARY OF FACTS

Claimant's purchase of two securities, Employee Solutions and Recycling Industries, was challenged on the basis of suitability and misrepresentation.

#### ISSUES PRESENTED

1. Were the purchases by Claimant of Employee Solutions and Recycling Industries suitable?
2. Is there any evidence of misrepresentation?

### **RELIEF REQUESTED**

Claimants request an award of approximately \$220,000.00 plus costs and punitive and exemplary damages.

Respondents request a decision in their favor with an award for costs and fees. Respondents further request that claimant's representative be sanctioned in the amount of \$25,000.00 for conducting the arbitration in bad faith.

### **FINDINGS**

The claims of misrepresentation were deemed to be without merit

The majority of the arbitrators find claimant did not meet his burden of proving that the stockbroker's recommendations were unsuitable.

### **DECISION**

1. The claims of misrepresentation are **DISMISSED**
2. The sanctions requested by Respondents with regard to Claimant's representative are **DENIED**.
3. Respondents' request for costs and fees is **DENIED**.
4. The majority of the arbitrators find that the broker met the standard of suitability in recommending to the Claimant both the initial and subsequent purchases of Employee Solutions and Recycling Industries.
5. Monetary damages are **DENIED**.
6. Punitive damages are **DENIED**.
7. Each party will bear its own cost of arbitration.
8. Each party will bear its own attorney's fees.

The original new account form for Claimant was not maintained as required. The Arbitrators believe that this violation should be recommended for disciplinary investigation.

### **FORUM FEES**

Respondents are assessed forum fees in the amount of \$1,125.00 payable to the Pacific Exchange.

Claimant is assessed forum fees in the amount of \$3,375.00 payable to the Pacific Exchange.

Dated: 11-30-2000

  
Lester Friedman, Chair

Dated: 12/3/2000

  
Amy Selzer, Public Arbitrator

Dated: 12/6/00

  
Michele Neureuter, Industry Arbitrator