

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-04595

Gordon B. LeGrand, Gordon C. LeGrand,  
Charles W. LeGrand, Judith C. LeGrand,  
and Gordon B. LeGrand as Trustee of  
Raleigh Pathology Lab Associates, PA Profit Sharing  
Plan and Raleigh Pathology Lab Associates, PA  
Money Purchase Pension Plan

Names of the Respondents

Hearing Site: Raleigh, North Carolina

Goldman, Sachs and Company,  
Joseph O. Bowman, III, and  
Christopher B. Sullivan

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

**REPRESENTATION OF PARTIES**

Claimants Gordon B. LeGrand, Gordon C. LeGrand, Charles W. LeGrand, Judith C. LeGrand, and Gordon B. LeGrand as Trustee of Raleigh Pathology Lab Associates, PA Profit Sharing Plan ("Profit Sharing Plan") and Raleigh Pathology Lab Associates, PA Money Purchase Pension Plan ("Pension Plan"), hereinafter collectively referred to as "Claimants", were represented by Adam C. Silverstein, Esq., Golenbock, Eisman, Assor, Bell & Peskoe, New York, New York.

Respondents Goldman, Sachs and Company ("Goldman Sachs"), Joseph O. Bowman, III, ("Bowman") and Christopher B. Sullivan ("Sullivan"), hereinafter collectively referred to as "Respondents", were represented by Donald H. Tucker, Jr., Esq., Smith Anderson Blount Dorsett Mitchell, Raleigh, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on August 5, 2002.

Claimants signed Uniform Submission Agreements on July 29, 2003.

Statement of Answer filed by Respondents on October 9, 2002.

Respondent Sullivan signed the Uniform Submission Agreement on October 5, 2002.

Respondent Bowman signed the Uniform Submission Agreement on September 20, 2002.

A representative of Respondent Goldman Sachs executed the Uniform Submission Agreement on October 4, 2002.

Respondent Sullivan's Motion to Dismiss was filed on September 8, 2003.  
Claimants' Opposition to the Motion to Dismiss was filed on October 1, 2003.

#### CASE SUMMARY

Claimants asserted the following causes of action, among others: federal securities fraud under § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; common law fraud; breach of fiduciary duty; breach of contract; negligence; and, negligent failure to supervise. The causes of action relate to the alleged sale of all Claimants' securities in the accounts in question and the purchase of Goldman Sachs's mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; statute of limitations; Respondents had discretionary trading authority; Claimants are not entitled to the damages requested; lack of causation; the individual Respondents were properly supervised; contributory/comparative negligence; ratification, waiver, estoppel and laches; failure to mitigate; accord and satisfaction; and, economic loss rule.

#### RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	
Gordon B. LeGrand	no less than \$ 30,750.00
Gordon C. LeGrand	no less than \$ 48,700.00
Charles W. LeGrand	no less than \$104,900.00
Judith C. LeGrand	no less than \$520,500.00
Profit Sharing Plan	no less than \$ 3,400.00
Pension Plan	no less than \$ 2,500.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested all of Claimants' claims be dismissed; that Claimants have and recover nothing against the Respondent; that the CRD records of Respondent Bowman and Sullivan have all references to Claimants' complaints against them expunged; that costs and available attorneys' fees be assessed to Claimants; and, for all other relief that the Panel deems proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

By Order dated October 13, 2003, the Panel denied the Motion to Dismiss Respondent Sullivan.

At the conclusion of Claimants' case-in-chief, Respondent Sullivan reasserted the Motion to Dismiss. The Panel granted the motion.

After the conclusion of the hearing on the merits and prior to the Panel's deliberation, Chairman John R. Angermayer was forced to withdraw from the Arbitration Panel as a result of unforeseen circumstances. The parties agreed to proceed with the remaining two arbitrators.

The Panel declined to consider Respondent's December 5, 2003 Supplement.

### 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. Respondent Goldman Sachs and Respondent Bowman are jointly and severally liable to and shall pay to Claimant Gordon B. LeGrand compensatory damages in the amount of \$19,957.00;
2. Respondent Goldman Sachs and Respondent Bowman are jointly and severally liable to and shall pay to Claimant Gordon C. LeGrand compensatory damages in the amount of \$11,140.00;
3. Respondent Goldman Sachs and Respondent Bowman are jointly and severally liable to and shall pay to Claimant Charles W. LeGrand compensatory damages in the amount of \$30,540.00;
4. Respondent Goldman Sachs and Respondent Bowman are jointly and severally liable to and shall pay to Claimant Profit Sharing Plan compensatory damages in the amount of \$72,923.00;
5. Respondent Goldman Sachs and Respondent Bowman are jointly and severally liable to and shall pay to Claimant Pension Plan compensatory damages in the amount of \$24,379.00;
6. Respondent Goldman Sachs and Respondent Bowman are jointly and severally liable to and shall pay to Claimants reimbursement of filing fee in the amount of \$375.00;
7. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Sullivan 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 Sullivan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
8. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,

9. Any and all relief not specifically addressed herein is denied in its entirety.

### 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	= \$ 375.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Goldman Sachs is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
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Pre-hearing conference:	March 27, 2003	1 session
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Nine (9) Hearing sessions @ \$1,200.00	= \$10,800.00
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Hearing Dates:	October 28, 2003	2 sessions
	October 29, 2003	2 sessions
	October 30, 2003	2 sessions
	November 24, 2003	2 sessions
	<u>November 25, 2003</u>	<u>1 session</u>

Total Forum Fees	= \$12,000.00
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1. The Panel has assessed \$12,000.00 of the forum fees to Respondent Goldman Sachs.

### FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Refund Owed Claimant	= \$ 1,200.00

## 2. Respondent Goldman Sachs is assessed and shall pay the following fees:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 12,000.00</u>
Total Fees	= \$ 19,000.00
<u>Less payments</u>	<u>= \$ 8,750.00</u>
Balance Due NASD Dispute Resolution	= \$ 10,250.00

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

ARBITRATION PANEL

Alan L. Berger

Rudolf Beck

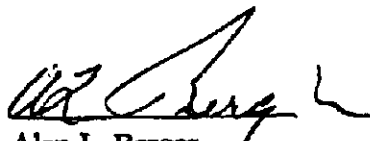
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

**NASD Dispute Resolution**

Arbitration No. 02-04595

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**Concurring Arbitrators' Signatures**

  
Alan L. Berger  
Public Arbitrator, Panelist

2-6-04  
Signature Date

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Rudolf Beck  
Non-Public Arbitrator, Panelist

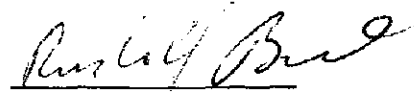
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Signature Date

February 6, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Alan L. Berger  
Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Rudolf Beck  
Non-Public Arbitrator, Panelist

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Signature Date

February 6, 2004  
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Date of Service (For NASD Dispute Resolution office use only)