
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Edward R. Scott, Jr. and Elizabeth Scott

Case Number: 03-03912

Name of the Respondents

Goldman Sachs & Co. and Kirk Rimer

Hearing Site: Albuquerque, New Mexico

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

REPRESENTATION OF PARTIES

Claimants, Edward R. Scott, Jr. and Elizabeth Scott ("Scott"), hereinafter collectively referred to as "Claimants": George Whittenburg, Esq. of the law firm Whittenburg, Whittenburg, Schachter & Harris, P.C., located in Amarillo, Texas.

Respondents, Goldman Sachs & Co. ("Goldman Sachs") and Kirk Rimer ("Rimer"), hereinafter collectively referred to as "Respondents": Charles A. Gall, Esq. of the law firm Jenkins & Gilchrist, located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: May 28, 2003

Claimants jointly signed the Uniform Submission Agreement: May 23, 2003

Statement of Answer jointly filed by Respondents Goldman Sachs and Rimer: July 29, 2003

Respondent Goldman Sachs signed the Uniform Submission Agreement: August 26, 2003

Respondent Rimer signed the Uniform Submission Agreement: February 25, 2003

Claimants filed a Motion to Amend Statement of Claim and First Amended Statement of Claim: July 23, 2004

Respondents filed a Response to Motion to Amend Statement of Claim: August 6, 2004

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations and suitability. The causes of action relate to the order execution of unspecified stocks in the ERS Enterprises Inc. Defined Benefit Plan & Trust Account with Goldman Sachs. Claimant asserted that Goldman Sachs recommended unsuitable and speculative investments based on their own self interest and failed to implement the 20% stop loss, as agreed to by the Claimants and Goldman Sachs.

Unless specifically admitted in its Answer, Respondents Goldman Sachs and Rimer denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants' losses were the result of their own investment decisions and conduct. Claimants actively monitored his account, made their own decisions, and acknowledged awareness of the risks of their investment decisions and their ability and willingness to accept those risks. Accordingly, Claimants' claims are barred by their own conduct, decisions and negligence. No conduct of Respondents caused any of Claimants' alleged damages.
2. Claimants' claims are barred by waiver, estoppel, ratification, assumption of the risk, comparative negligence and proportionate responsibility, as well as Claimants' failure to mitigate their alleged damages.
3. Claimants' alleged exemplary damages are barred and/or limited in whole or in part by Texas Civil Practice Code §§ 41.001, *et seq.*

RELIEF REQUESTED

Claimants requested \$976,000.00 in compensatory damages, \$2,928.00 in punitive damages, pre and post-judgment interest, costs, attorney's fees and for such other relief as the Panel deems just and proper.

Respondents, Goldman Sachs and Rimer, requested that the Statement of Claim be dismissed with prejudice; that the Panel order all references to this matter be stricken and expunged from Respondent Rimer's permanent record maintained by the Central Registration Depository ("CRD"); that all forum fees and arbitration costs be assessed against Claimants and that Goldman Sachs be refunded its member surcharge; and all other and further relief the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

In an Order dated August 11, 2004, the Panel granted Claimants' Motion to Amend and First Amended Statement of Claim.

At the hearing of this matter, Claimants withdrew their claims for attorney's fees and costs for the expert witness fees. Respondents also withdrew their claims for attorney's fees.

At the hearing of this matter, Respondents made an oral motion to dismiss this matter. The Panel denied the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimants, Edward R. Scott, Jr. and Elizabeth Scott, are denied.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kirk L. Rimer's 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 Rimer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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 = \$ 600.00

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 person at the time of the events giving rise to the dispute. Accordingly, Goldman Sachs & Co. is a party and is assessed the following:

Member surcharge = \$2,800.00
 Pre-hearing process fee = \$ 750.00
 Hearing process fee = \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 13-15, 2004 adjournment by Claimant = \$1,200.00
 (waived by Panel)

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
 Pre-hearing conference: April 12, 2004 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$2,400.00
 Pre-hearing conferences: March 24, 2004 1 session
 September 13, 2004 1 session

Five (5) Hearing sessions @ \$1,200.00 = \$6,000.00
 Hearing Dates: June 27, 2005 1 session
 June 28, 2005 2 sessions
 June 29, 2005 2 sessions

Total Forum Fees = \$8,850.00

1. The Panel assessed 50% of the total forum fees in the amount of \$4,425.00 jointly to Claimants, Edward R. Scott, Jr. and Elizabeth Scott.
2. The Panel assessed 50% of the total forum fees in the amount of \$4,425.00 jointly and severally to Respondents, Goldman Sachs & Co. and Kirk L. Rimer.

FFF SUMMARY

1. Claimants are jointly solely liable for:

| | |
|-------------------------------------|---------------------|
| Initial Filing Fee | = \$ 600.00 |
| <u>Forum Fees</u> | <u>= \$4,425.00</u> |
| Total Fees | = \$5,025.00 |
| <u>Less payments</u> | <u>= \$1,800.00</u> |
| Balance Due NASD Dispute Resolution | = \$3,225.00 |

2. Respondent, Goldman Sachs & Co., is solely liable for:

| | |
|-------------------------------------|---------------------|
| Member Fees | = \$8,550.00 |
| <u>Less payments</u> | <u>= \$8,550.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

3. Respondents, Goldman Sachs & Co. and Kirk L. Rimer, are jointly and severally liable for:

| | |
|-------------------------------------|------------------|
| Forum Fees | = \$4,425.00 |
| <u>Less payments</u> | <u>= \$ 0.00</u> |
| Balance Due NASD Dispute Resolution | = \$4,425.00 |

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

ARBITRATION PANEL

| | | |
|--------------------------|---|--|
| Peter J. Broullire, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Carl E. Gutman | - | Public Arbitrator |
| Kenneth R. Johnston | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

/s/ Peter J. Broullire, Esq.
Peter J. Broullire, Esq.
Public Arbitrator, Presiding Chairperson

7/5/05
Signature Date

/s/ Carl E. Gutman
Carl E. Gutman
Public Arbitrator

7/10/05
Signature Date

NASD Dispute Resolution

Arbitration No. 03-03912

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/s/ Kenneth R. Johnston

Kenneth R. Johnston

Non-Public Arbitrator

7/6/05

Signature Date

7/6/05

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-03912
Award, Page 4 of 5

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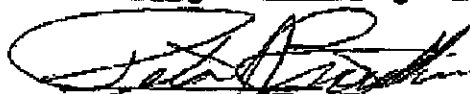
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Carl E. Gutman
Kenneth R. Johnston

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

7/5/05
Signature Date

Carl E. Gutman
Public Arbitrator

Signature Date

NASD Dispute Resolution
 Arbitration No. 03-03812
Award Page 4 of 5

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7-6-05

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