

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Catherine Hall

Case Number: 03-04001

Name of the Respondents
Southwest Securities, Inc.
Flexvest Securities Group, Inc.

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firms

REPRESENTATION OF PARTIES

Claimant Catherine Hall, hereinafter referred to as "Claimant": James R. Marlen, Esq., of the Law Offices of James R. Marlen, located in Dallas, Texas.

Respondent Southwest Securities, Inc. ("Southwest"): Will S. Montgomery, Esq., of the firm of Jenkins & Gilchrist, located in Dallas, Texas.

Respondent Flexvest Securities Group, Inc. ("Flexvest"): C. Mark Stratton, Esq., of the firm of Henslee, Fowler, Hepworth & Schwartz LLP, located in Austin, Texas.

CASE INFORMATION

Statement of Claim filed: May 28, 2003.

Claimant signed the Uniform Submission Agreement: May 19, 2003.

Claimant's Memorandum of Law in Support of Control person, Failure to Supervise and Derivative Liability Claims filed on: May 28, 2003.

Claimant's Brief in Support of the Investor Justifiable Reliance Standard & Claims for Fraud and Breach of Fiduciary Duty filed on: May 28, 2003.

Claimant's Brief in Support of Her Claims for Punitive Damages & Attorney Fees Under the Texas Deceptive Trade Practices Act, Business and Commerce Code and Securities Act filed on: May 28, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Southwest on: August 6, 2003.

Respondent Southwest signed the Uniform Submission Agreement: June 30, 2003.

First Amended Answer and Motion to Dismiss of Respondent Southwest filed on: September

14, 2004.

Statement of Answer filed by Respondent Flexvest on: August 26, 2003.

First Amended Answer of Respondent Flexvest filed: July 28, 2004.

Second Amended Answer of Respondent Flexvest filed on: September 30, 2004.

Respondent Flexvest did not file an executed Uniform Submission Agreement.

Respondent Flexvest's Motion for Leave to File Amended Answer filed: September 30, 2004.

Respondent Flexvest's Request for Dismissal of Arbitral Proceedings filed on: September 30, 2004.

Claimant's Response in Opposition to Respondent Southwest Securities Inc.'s Motion to Dismiss filed: November 21, 2003.

Claimant's Request to Reopen the Dismissal of Southwest filed on: April 8, 2005

Southwest's Response to Claimant's Request to Reopen the Dismissal of Southwest filed: April 20, 2005.

Claimant's Reply to Southwest's Response filed: April 20, 2005.

Southwest's Response to Claimant's Reply filed: April 2, 2005.

CASE SUMMARY

Claimant asserted the following causes of action:

1. Violations of federal and state securities laws;
2. Violations of the Texas Deceptive Trade Practices Act (DTPA);
3. Violations of the Texas Business & Commerce Code;
4. Negligence/gross negligence/breach of industry standards;
5. Breach of contract;
6. Breach of duty, fiduciary or otherwise;
7. Common law fraud-misrepresentations and omissions; constructive fraud; and fraudulent concealment;
8. *Respondeat superior*;
9. Controlling person liability;
10. Aiding and abetting liability;
11. Failure to supervise;
12. Promissory/equitable estoppel;
13. Unjust enrichment;
14. Negligent infliction of emotional distress; and
15. Promissory estoppel, detrimental reliance, waiver and ratification duplicate.

These causes of action related to Claimant's allegations that Respondents mismanaged her life savings by concentrating her account in a handful of speculative high tech stocks with little or no diversification into suitable asset classes.

Unless specifically admitted in its Answer, Respondent Southwest denied the allegations made in

the Statement of Claim and asserted the following defenses:

1. Southwest is not liable for the alleged wrongful acts of the other Respondents;
2. Southwest is not the principal of Flexvest and cannot be held liable under agency principles;
3. Southwest is not a "Controlling Person" within the meaning of the securities laws;
4. Claimant's claims are barred, in whole or in part, by comparative and/or contributory negligence;
5. Claimant's claims are barred, in whole or in part, by their failure to mitigate their damages, if any;
6. Claimant's claims are barred, in whole or in part, because Southwest acted in good faith at all relevant times;
7. Claimant's claims are barred, in whole or in part, by waiver, ratification or estoppel;
8. There is no private cause of action for a violation of the NASD, NYSE or other Self-Regulatory Organization's rules; and
9. Any loss incurred by Claimant was, in whole or in part, caused by acts of third parties and/or by conditions and events outside the control of Southwest.

Unless specifically admitted in its Answer, Respondent Flexvest denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant authorized, consented to, and ratified each and every trade made by Flexvest or Respondents;
2. Claimant's claims fail to properly state a claim for relief or are otherwise deficient and should be dismissed with prejudice;
3. The Statement of Claim should be dismissed pursuant to Section 16 and 26(a) of the NASD Code;
4. Hall was at all times apprised of and knew or should have known the risk, standards of suitability and commissions associated with each investment;
5. Claimant failed to exercise due diligence or otherwise exercise reasonable care and was otherwise negligent, to the extent she claims that these objectives of the investment objectives of Claimant were not being met, and this negligence or failure to use due care was the proximate cause of any damages suffered by Claimant;
6. Claimant assumed all risks related to her investments and failed to mitigate any damages;
7. The sole proximate cause of any losses claimed by Claimant were not caused by Flexvest or any other Respondent, but rather by Claimant's own conduct or by market forces beyond the control of Flexvest or any other Respondent;
8. No negligent misrepresentation or misrepresentation occurred as there were never any guarantees or promises of any particular return on Claimant's investment portfolio;
9. Pursuant to Federal law, Claimant is required to plead and prove reliance as well as plead fraud with specific and sufficient specificity to survive a Rule 9 motion and has failed to do so;

10. Claimant has failed to plead and is unable to establish elements of a claim of fraud;
11. Claimant had sufficient knowledge and sophistication to be able to ascertain what she wished to invest;
12. The overall market conditions were the intervening cause which destroyed the causal connection between Respondents' act or omission, and is therefore a source of any injury suffered by Claimant;
13. The claims are barred by the doctrines of estoppel, laches and ratification, and by the applicable statutes of limitations; and,
14. Respondent is not liable to Claimant under the DTPA because the services and advice of Respondent is exempt from the DTPA because it was a professional service the essence of which was providing advice, judgment, opinion or similar professional skill.

RELIEF REQUESTED

Claimant Catherine Hall requested:

| | |
|----------------------|---|
| Compensatory Damages | In excess of \$200,000.00 |
| Punitive Damages | At least three times actual damages |
| Treble Damages | Pursuant to the Texas Business and Commerce Code Section 27.01 and the DTPA |
| Interest | Prejudgment and post-judgment interest at the maximum rate allowed by law of 10% |
| Attorneys' Fees | Pursuant to the Tex. Civ. Prac. & Rem. Code, Texas Business and Commerce Code Section 27.01, the DTPA, and other applicable law |
| Other Costs | Including expert witness fees. |

Respondent Southwest requested that the claims against it be dismissed.

Respondent Flexvest requested that the Statement of Claim be dismissed with prejudice, that Claimant recover nothing against Flexvest, that the Panel tax all expenses of arbitration against Claimant, and that Flexvest have such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Flexvest did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On August 19, 2004, the Panel granted Respondent Flexvest's Motion to File the First Amended Statement of Answer.

On November 23, 2004, a pre-hearing conference was held before the full panel in order to hear argument regarding the Respondents' Motions to Dismiss and Flexvest's Motion for Leave to Amend. After hearing argument, the Panel determined in an order dated November 23, 2004 that Respondent Southwest's Motion to Dismiss was granted and that all claims were dismissed against it. Respondent Flexvest's Motion to Dismiss was denied, but Flexvest's Motion for Leave to File Second Amended Answer was granted.

On or about April 28, 2005, the Panel denied Claimant's Request to Reopen the Dismissal of Southwest.

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. The claims filed by Claimant Catherine Hall against Respondent Flexvest Securities Group, Inc. are hereby dismissed and denied in their entirety;
2. Pursuant to the Panel's decision of November 23, 2004, the claims filed by Claimant Catherine Hall against Respondent Southwest Securities, Inc. are hereby dismissed with prejudice;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision; and,
4. Any and all relief not specifically addressed herein, including punitive and treble 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 | = \$ 375.00 |
|--------------------------|-------------|

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, Respondents Southwest Securities, Inc. and Flexvest Securities Group, Inc. are each a party and are assessed the following member fees:

| | |
|-------------------------|---------------|
| Member surcharge | = \$ 2,250.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$ 4,000.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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:

| | |
|--|---------------------|
| Three (3) Pre-hearing sessions with Panel @ \$1,200.00 | = \$ 3,600.00 |
| Pre-hearing conferences: | |
| August 19, 2004 | 1 session |
| November 17, 2004 | 1 session |
| November 23, 2004 | 1 session |
| Six (6) Hearing sessions @ \$1,200.00 | = \$ 7,200.00 |
| Hearing Date(s): | |
| May 4, 2005 | 2 sessions |
| May 5, 2005 | 2 sessions |
| May 6, 2005 | 2 sessions |
| <hr/> Total Forum Fees | <hr/> = \$10,800.00 |

The Panel has assessed \$10,800.00 of the forum fees to the Claimant, Catherine Hall.

FEE SUMMARY

Claimant Catherine Hall is solely liable for:

| | |
|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 375.00 |
| Forum Fees | = \$10,800.00 |
| Total Fees | = \$11,175.00 |
| Less payments | = \$ 1,575.00 |
| Balance Due NASD Dispute Resolution | = \$ 9,600.00 |

Respondent Southwest Securities, Inc. is solely liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 7,000.00 |
| Less payments | = \$ 7,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent Flexvest Securities Group, Inc. is solely liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 7,000.00 |
| Less payments | = \$ 7,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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

ARBITRATION PANEL

Jonathan A. Pace, Esq. - Public Arbitrator, Presiding Chairperson
Donna Ross Philip, Esq. - Public/Non-Public Arbitrator
Robert E. Otto - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Jonathan A. Pace, Esq.
Public Arbitrator, Presiding Chairperson

May 17, 2005

Signature Date

Donna Ross Philip, Esq.
Public Arbitrator

Signature Date

Robert E. Otto
Non-Public Arbitrator

Signature Date

May 17, 2005 

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

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Jonathan A. Pace, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Donna Ross Philip, Esq.
Public Arbitrator

5-16-05
Signature Date

Robert E. Otto
Non-Public Arbitrator

Signature Date

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Public Arbitrator

Signature Date

Robert E. Otto

Robert E. Otto
Non-Public Arbitrator

5/16/05
Signature Date

May 17, 2005 MM
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