

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Eugene L. Mueller Jr. and Ruth E. Mueller as Trustees for the Eugene & Ruth Mueller Family Trust of 1981 DTD 6/8/81, Claimants v. Goldman, Sachs & Co., Respondent

Case Number: 03-05618

Hearing Site: San Diego, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

G. Mark Brewer, Esq.
Brewer & Carlson, LLP
La Jolla, California

For Respondent:

Samuel A. Keesal, Jr., Esq.
Elizabeth H. Lindh, Esq.
Keesal, Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: July 29, 2003

Claimants' Joint Uniform Submission Agreement signed: July 29, 2003

Statement of Answer filed by Respondent: September 24, 2003

Respondent's Uniform Submission Agreement signed: September 24, 2003

CASE SUMMARY

Claimants alleged the following: (1) negligence - failure to diversify; (2) negligence - unsuitability; (3) negligence - failure to supervise; and (3) negligence - misrepresentations. The dispute involved the purchase and/or sale of The Gap, Inc. stock and other unspecified securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of at least \$761,792.00, interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On July 29, 2003, Claimants' and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On September 23, 2003, NASD Dispute Resolution received Respondent's counsel's signed Waiver Agreement on Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

At the close of Claimants' testimony, Respondent made a Motion to Dismiss. After due deliberation, the Panel denied the motion without prejudice.

The panel wishes to commend counsel for professionalism and competency.

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

- 1) Respondent is liable to and shall pay Claimants \$217,814.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimants \$375.00 as reimbursement of filing fees.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Goldman, Sachs and Company is a party and the following fees are assessed:

Member Surcharge = \$ 2,250.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$ 4,000.00

Total Member Fees = \$ 7,000.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, August 2-5, 2004
adjournment = \$ 1,200.00

Hearing Dates, August 24-27, 2004
adjournment requested by Respondent = \$ 1,200.00

1. The Panel waived \$1,200.00 of the adjournment fee for the August 2-5, 2004 adjournment.
2. The Panel assessed \$1,200.00 of the adjournment fee for the August 24-27, 2004 adjournment to Respondent.

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 conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: April 27, 2004 1 session

Three (3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 3,600.00
Pre-hearing conferences: December 1, 2003 1 session
April 19, 2004 1 session
August 12, 2004 1 session

Eight (8) Hearing sessions @ \$1,200.00/session = \$ 9,600.00
Hearings: January 11, 2005 2 sessions
January 12, 2005 2 sessions
January 13, 2005 2 sessions
January 14, 2005 2 sessions

Total Forum Fees = \$13,650.00

1. The Panel waived \$1,200.00 of the forum fees for the April 19, 2004 telephonic pre-hearing conference.
2. The Panel assessed \$12,450.00 of the forum fees to Respondent.

Fee Summary


1. Claimants are charged jointly and severally with the following fees and costs:
Initial Filing Fee = \$ 375.00
Less payments = \$(1,575.00)
Refund Due Claimants = \$(1,200.00)
2. Respondent is charged with the following fees and costs:
Member Fees = \$ 7,000.00
Adjournment Fee = \$ 1,200.00
Forum Fees = \$12,450.00
Total Fees = \$20,650.00
Less payments = \$(7,000.00)
Balance Due NASD Dispute Resolution = \$13,650.00

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

ARBITRATION PANEL

Evelyn R. Wiggins, Esq.	-	Public Arbitrator, Presiding Chair
Robert J. Ruben, Esq.	-	Public Arbitrator
Richard K. Kenner	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Evelyn R. Wiggins, Esq.
Chair, Public Arbitrator

2/8/05
Signature Date

Robert J. Ruben, Esq.
Public Arbitrator

Signature Date

Richard K. Kenner
Non-Public Arbitrator

Signature Date

2/8/05
Date of Service

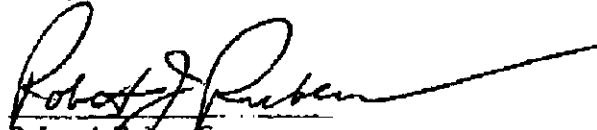
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