

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David Gintzon and Linda Gintzon, David Gintzon Studio, LTD PSP, and Edward L. Gintzon
Exempt Trust, Claimants v. D.A. Davidson & Co., Davidson Companies, and Thomas L. Gibson,
Respondents

Case Number: 04-01142

Hearing Site: Seattle, Washington

Nature of the Dispute: Customers v. Member, Non-Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Michael J. Hines, Esq.
Michael D. Franklin, Esq.
Lukins & Annis, P.S.
Spokane, Washington

For Respondents:

Brian Meenaghan, Esq.
Lane Powell Spears &
Lubersky
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: February 19, 2004

Claimants' Joint Uniform Submission Agreement signed: February 18, 2004

Joint Statement of Answer filed by Respondents D.A. Davidson & Co., Inc., Davidson
Companies, and Thomas L. Gibson: April 27, 2004

Respondent D.A. Davidson & Co.'s Uniform Submission Agreement signed: April 27, 2004

Respondent Davidson Companies' Uniform Submission Agreement signed: May 4, 2004

Respondent Thomas L. Gibson's Uniform Submission Agreement signed: April 27, 2004

CASE SUMMARY

Claimants alleged unsuitability, breach of fiduciary duty, failure to supervise, and negligence.
Claimants' allegations involved unspecified technology stocks.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim

and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$235,419.00 in compensatory damages, loss of reasonable investment opportunity, pre- and post-judgment interest, forum fees, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

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, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel finds that Respondent Thomas L. Gibson failed to adequately warn Claimants David Ginzton and Linda Ginzton, David Ginzton Studio, LTD PSP, and Edward L. Ginzton Exempt Trust of the risks of concentrating their investments in a single sector of the stock market.
- 2) The Panel finds that Claimants David Ginzton and Linda Ginzton, David Ginzton Studio, LTD PSP, and Edward L. Ginzton Exempt Trust failed to follow Respondent Thomas L. Gibson's recommendations to diversify; therefore, the compensatory damage award is reduced by Claimants' contributory fault.
- 3) Respondents D.A. Davidson & Co., Davidson Companies, and Thomas L. Gibson are jointly and severally liable to and shall pay Claimants David Ginzton and Linda Ginzton, David Ginzton Studio, LTD PSP, and Edward L. Ginzton Exempt Trust the sum of \$50,000.00 in compensatory damages.
- 4) Respondents D.A. Davidson & Co., Davidson Companies, and Thomas L. Gibson are jointly and severally liable to and shall pay Claimants David Ginzton and Linda Ginzton, David Ginzton Studio, LTD PSP, and Edward L. Ginzton Exempt Trust interest in the amount of 7% per annum on \$50,000.00 in compensatory damages from the date of service of this Award until payment of this Award is made in full.
- 5) Respondents D.A. Davidson & Co., Davidson Companies, and Thomas L. Gibson are jointly and severally liable to and shall pay Claimants David Ginzton and Linda Ginzton,

David Ginzton Studio, LTD PSP, and Edward L. Ginzton Exempt Trust the sum of \$11,195.33 as reimbursement for legal costs.

- 6) Respondents D.A. Davidson & Co., Davidson Companies, and Thomas L. Gibson are jointly and severally liable to and shall pay Claimants David Ginzton and Linda Gintzon, David Ginzton Studio, LTD PSP, and Edward L. Ginzton Exempt Trust the sum of \$32,457.75 in attorney's fees.
- 7) With the exception of paragraphs 5 and 6, the parties shall bear their respective costs, including attorney's fees.
- 8) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the 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	= \$ 300.00
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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 D.A. Davidson & Co. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: September 30, 2004	1 session

One (1) pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: July 1, 2004	1 session

Six (6) hearing sessions @ \$1,125.00/session		= \$6,750.00
Hearings:		
	December 15, 2004	2 sessions
	December 16, 2004	2 sessions
	December 17, 2004	2 sessions
Total Forum Fees		= \$8,325.00

The Panel assessed \$8,325.00 of the forum fees jointly and severally to Respondents D.A. Davidson & Co., Davidson Companies, and Thomas L. Gibson.

Fee Summary

1. Claimants David Gintzon and Linda Gintzon, David Gintzon Studio, LTD PSP, and Edward L. Gintzon Exempt Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Refund Due Claimants	= \$(1,125.00)
2. Respondent D.A. Davidson & Co. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents D.A. Davidson & Co., Davidson Companies, and Thomas L. Gibson are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$8,325.00</u>
Balance Due NASD Dispute Resolution	= \$8,325.00

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.

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ARBITRATION PANEL

Douglas Martin Crow
Paul D. Hansen, Esq.
Paul A. Maffeo

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Douglas M. Crow

Douglas Martin Crow
Chair, Public Arbitrator

12-29-04

Signature Date

Paul D. Hansen, Esq.
Public Arbitrator

Signature Date

Paul A. Maffeo
Non-Public Arbitrator

Signature Date

12/29/04

Date of Service

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Chair, Public Arbitrator

Signature Date



Paul D. Hansen, Esq.
Public Arbitrator

Signature Date

Paul A. Maffeo
Non-Public Arbitrator

Signature Date



Date of Service

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Public Arbitrator

Signature Date

Paul A. Maffeo
Paul A. Maffeo
Non-Public Arbitrator

Dec 28 2004
Signature Date

12/29/04
Date of Service