

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

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In the Matter of the Arbitration Between:

Robert R. Wahler, Trustee for The Wahler Family Trust, Able LLC, and Westfore LTD,  
Claimants v. Goldman, Sachs & Co., Respondent

Case Number: 06-00113

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

For Claimants Robert R. Wahler, Trustee  
for The Wahler Family Trust, Able LLC,  
and Westfore LTD (hereinafter collectively  
referred to as "Claimants"):

Paul W. Thomas, Esq.  
Neda Ataie, Esq.  
Thomas & Ataie L.L.P.  
Carlsbad, California

For Respondent Goldman Sachs & Co.  
(hereinafter referred to as "Respondent"):

Michael J. Lawson, Esq.  
Joseph E. Floren, Esq.  
Elizabeth A. Frohlich, Esq.  
Sheila A. Jambekar, Esq.  
Morgan, Lewis, & Bockius LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: January 6, 2006

Claimant The Wahler Family Trust's Uniform Submission Agreement signed:  
February 17, 2006

Claimant Able LLC's Uniform Submission Agreement signed: February 17, 2006

Claimant Westfore LTD's Uniform Submission Agreement signed: February 26, 2006

Statement of Answer filed by Respondent: June 23, 2006

Respondent's Uniform Submission Agreement signed:  
January 23, 2007

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, unsuitability, elder abuse, and failure to supervise. Claimants' allegations involved an exchange of Claimants' previously owned shares in Sempra Energy for shares in the Goldman Sachs Greene Street 1997 Exchange Fund, LP and the Goldman Sachs GS PEP Technology Fund 2000, LP.

Respondent denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant The Wahler Family Trust requested \$3,401,408.00 in compensatory damages. Claimants Able LLC and Westfore LTD requested \$4,124,951.00 in compensatory damages. In addition, Claimants requested lost opportunity damages, punitive damages, pre-award interest, and costs, including attorney's fees.

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

### **OTHER ISSUES CONSIDERED AND DECIDED**

On October 31, 2006, Respondent moved the Panel to dismiss the Statement of Claim. Claimants filed an opposition to Respondent's Motion to Dismiss on December 15, 2006. On January 5, 2007, Respondent filed a Reply to Claimants' Opposition. On January 19, 2007, a telephonic pre-hearing conference was held, attended by Claimants' counsel, Paul W. Thomas, Esq., Respondent's counsel, Michael J. Lawson, Esq. and Elizabeth A. Frohlich, Esq., and the Panel. After due deliberation, the Panel granted Respondent's 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 and the parties' arguments presented during the January 19, 2007 pre-hearing conference, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted, including Claimants' requests for lost opportunity damages, punitive damages, and pre-award interest, are 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	= \$ 600.00
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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 Goldman, Sachs & Co. is a party and the following fees are assessed:

Member Surcharge	= \$3,750.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,500.00
<b>Total Member Fees</b>	<b>= \$9,600.00</b>

#### **Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences:      September 11, 2006      1 session	
January 19, 2007      1 session	
<b>Total Forum Fees</b>	<b>= \$2,400.00</b>

1. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$1,200.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimants The Wahler Family Trust, Able LLC, and Westfore LTD are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,800.00
Less payments	= \$ (2,400.00)
<b>Refund Due to Claimants</b>	<b>= \$ (600.00)</b>

2. Respondent Goldman, Sachs & Co is charged with the following fees and costs:

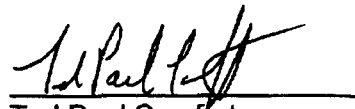
Member Fees	= \$ 9,600.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$10,800.00
Less payments	= \$ (9,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,200.00</b>

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**

Ted Paul Comfort	-	Public Arbitrator, Presiding Chair
Laurent C. Vonderweidt, Esq.	-	Public Arbitrator
Paul F. Meyer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Ted Paul Comfort  
Chair, Public Arbitrator

FEB 7, 2007  
Signature Date

\_\_\_\_\_  
Laurent C. Vonderweidt, Esq.  
Public Arbitrator

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

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Paul F. Meyer  
Non-Public Arbitrator

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

02/07/07  
Date of Service

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Ted Paul Comfort  
Chair, Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Laurent C. Vonderweidt, Esq.  
Public Arbitrator

2/06/2007  
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Signature Date

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Paul F. Meyer  
Non-Public Arbitrator

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Signature Date

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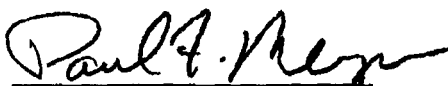
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Paul F. Meyer  
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2-7-07  
Signature Date

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