

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
GORDON CARL and JEAN M. MUELLER,)
)
) Claimants,)
) Case #88-02752
vs.) Award
)
)
W.S. GRIFFITH & CO., INC.,)
)
ROBERT L. KREINZ and)
)
FINANCIAL GROUP CONSULTING, INC.,)
)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Nalton Morrow Bennett, Esq.
Allan J. Fedor, Esq.
Terry G. Cleaves

CASE SUMMARY

This claim was filed with the NASD, Inc. on October 31, 1988. The hearing was conducted in Tampa, Florida on January 15, March 15 & 16, and April 10, 1990 with a total of ten (10) sessions.

Claimants, Gordon & Jean Mueller ("the Muellers"), alleged that Respondents, W.S. Griffith and Co., Inc. ("WSG"), Financial Group Consulting, Inc. ("FGC"), and Robert Kreinz ("Kreinz"), were liable for: unsuitability; breach of fiduciary duty; misrepresentation; and that FGC and Kreinz were not registered investment advisers in violation of Florida Statue Section 517.

Specifically, Claimants alleged that the recommendations of Respondents, that Claimants invest several limited partnerships, were improper in light of Claimants' stated investment objectives.

Respondent, FGC, alleged: it was not involved with, or responsible for, the actions of Kreinz; there was no detriment to Claimants; the investments were suitable for Claimants; the Dallas/Ft. Worth Com Serve, Ltd. investment was not sold by WSG or FGC; and if Kreinz sold it to Claimants, his doing so constituted a breach of his contract with WSG.

Respondent, Kreinz, asserted the affirmative defenses of: lack of proximate cause; assumption of risk; estoppel; ratification; that Kreinz lacked intent to defraud and did not act in a reckless manner; failure to exercise due diligence; knowledge; intervening causes; failure to mitigate damages; waiver; lack of reliance; comparative negligence; and laches.

Respondent, WSG, alleged that Kreinz had been told not to sell Dallas/Ft. Worth Com Serve because it was not on WSG's approved product list. WSG asserted crossclaims again Kreinz and FGC alleging indemnification and contribution.

Respondent, FGC, answered WSG's crossclaim and asserted affirmative defenses alleging that: FGC provided no advice to Claimants or to Kreinz; FGC played no part in the sale of any securities; FGC is not a registered broker-dealer and does not sell securities; FGC had no control over the actions of the other Respondents; was never consulted for advice on the appropriateness of purchasing the securities; and WSG and Kreinz are solely responsible for their actions. FGC also asserted crossclaims against Kreinz and WSG alleging breach of contract.

Respondent, Kreinz, answered FGC's, and WSG's, cross claims and asserted affirmative defenses alleging; he acted within the scope of his employment; good faith; comparative negligence; WSG knew of the existence of those matters which it now asserts are violations of law; and estoppel. Respondent, Kreinz, asserted crossclaims against WSG, and FGC, for indemnification or contribution based on their negligent failure to supervise Kreinz.

RELIEF REQUESTED

Claimants requested unspecified damages plus punitive damages, attorney's fees and costs. Respondent, WSG, requested dismissal of the claim and costs, crossclaimed against FGC for indemnification or contribution and requested dismissal of WSG's, and Kreinz's, crossclaims. Respondent, Kreinz, requested dismissal of the claim plus attorney's fees and costs, crossclaimed against FGC and WSG for indemnification or contribution and requested dismissal of WSG's, and FGC's, crossclaims.

AWARD

On January 15, March 15 & 16, and April 10, 1990 the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on August 12, 1988, and by Respondents, WSG, on January 15, 1990, FGC, on January 15, 1990 and Kreinz on December 6, 1989. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents, WSG, FGC, and Kreinz, are hereby liable, jointly and severally, and shall pay to Claimants the amount of Fifty Nine Thousand Eight Hundred and 00/100 (\$59,800.00) Dollars inclusive of interest at the rate of 9% per annum.
3. Claimants' request for attorney's fees and punitive damages is hereby dismissed in all respects.
4. Respondent, FGC, is not liable to Respondent, WSG, on the Cross-Claim and, therefore the Cross-Claim against it is hereby dismissed.

5. Respondent, Kreinz, is not liable to Respondent, WSG, on the Cross-Claim and therefore the Cross-Claim against him is hereby dismissed.
6. Respondent, WSG, is not liable to Respondent, FGC, on the Cross-Claim and therefore the Cross-Claim against it is hereby dismissed.
7. Respondent, Kreinz, is not liable to Respondent, FGC, on the Cross-Claim and therefore the Cross-Claim against him is hereby dismissed.
8. Respondent, WSG, is not liable to Respondent, Kreinz, on the Cross-Claim and therefore the Cross-Claim against it is hereby dismissed.
9. Respondent, FGC, is not liable to Respondent, Kreinz, on the Cross-Claim and therefore the Cross-Claim against it is hereby dismissed.
10. Respondent, Kreinz', request for attorney's fees is hereby dismissed in all respects.
11. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars (750 x 10 sessions). Respondents, WSG, FGC, and Kreinz, are hereby assessed forum fees in the amount of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars for which they shall be jointly and severally liable and Seven Hundred Fifty and 00/100 (\$750.00) Dollars of which shall be paid directly to the Claimants as a return of their filing fee. The NASD, Inc. shall retain the Seven-Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimants with the NASD, Inc. in partial satisfaction of such forum fees.
12. The parties shall bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Nalton Morrow Bennett, Esq.
Allan J. Fedor, Esq.
Terry G. Cleaves

Dated: June 8, 1990