

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Harry & Eleanor Gonick

Claimants

vs.

Drexel Burnham Lambert, Inc.

Respondent

AWARD

CASE NO. 89-00716

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on March 13, 1989. Claimants alleged negligence, breach of fiduciary duty, misrepresentation, and fraud in connection with Claimants' margin purchases of common stock, preferred stock, and convertible bonds in Financial Corporation of America ("FCA"). Specifically, Claimants alleged that Respondents were negligent in mispricing the FCA bonds on Claimants' monthly statements thereby misrepresenting the percentage of equity and buying power in Claimants' margin account which caused them to acquire additional FCA securities leaving Claimants with an overly concentrated position that was unsuitable to their investment objectives.

Respondent denied the allegations and maintained that Claimants made all investment decisions in their account and that from August 1984 through September 1986, Claimants made over thirty different purchases of FCA stock and bonds. Respondent further maintained that Claimants made virtually all of their FCA securities purchases when the effect of the bond mispricing understated and thereby reduced the buying power in their account, and that Claimants knew of the mispricing of the FCA bonds by July 1987 and chose to maintain their FCA position for reasons unrelated to the mispricing now being alleged.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages, as amended at the hearing, in the amount of \$823,596.00 representing actual damages plus 10% interest of \$539,337.00, commissions of \$50,104.00 and margin interest of \$234,155.00; in the alternative, Claimants requested damages in the amount of \$1,229,000.00 representing actual damages plus 10% interest of \$945,000.00, and

commissions and margin interest of \$284,000.00. Claimants further requested attorneys' fees, and withdrew their claim for punitive damages at the hearing.

Respondent requested dismissal of the claim.

DAMAGES AND RELIEF AWARDED

On March 22, 23, 29 and April 5, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 10, 1989 and by Respondent on June 1, 1989. The hearing was held in San Francisco, California and lasted seven (7) sessions. 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. Claimants are hereby awarded the sum of Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00).

2. The claim for pre-judgment interest is dismissed.

3. The claim for attorneys' fees is dismissed.

4. The parties shall each bear their respective costs including attorneys' fees.

5. Pursuant to Section 43 of the NASD Code of Arbitration Procedure:

- a. the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimants; and

- b. Respondent is hereby assessed the sum of \$1,000.00 representing the filing fee and shall reimburse Claimants directly.

OTHER ISSUES

The parties stipulated to the execution and service of the Award in counterpart copies.

DATE SERVED: 05/15/90