

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
George Doehring)	
)	Case No. 90-00117
)	
<u>Name of Respondent(s)</u>)	
)	
Morgan Gladstone Holding Corp.)	
Morgan Gladstone & Co., Inc.)	
Richard Gladstone)	
John Thomas Oehl)	
Kerry Rothschild)	
)	

REPRESENTATION

For Claimant, George Doehring ("Doehring"): Philip Snyderburn, Esq. of Snyderburn, Rishoi & Swann.

For Respondents, Morgan Gladstone Holding Corp. ("MGHC"), Morgan Gladstone & Co., Inc. ("MG&Co.") and Richard Gladstone ("Gladstone"): Charles Brodzki, Esq. of the Law Offices of Charles Brodzki, P.A.

For Respondent, John Thomas Oehl ("Oehl"): Charles Johnson, Esq. of the Law Offices of Charles P. Johnson.

For Respondent Kerry Rothschild ("Rothschild"): Ken Muszynski, Esq. of the Law Offices of Ken Muszynski.

CASE INFORMATION

Statement of Claim filed: January 4, 1990, with an Answer to Oehl's Counter Claim being filed: April 16, 1990. Claimant's Submission signed: January 2, 1990.

Respondents, MGHC, MG & Co., and Gladstone's, Statement of Answer and Crossclaim filed: March 1, 1990 with an Answer to Oehl's Crossclaim filed May 15, 1990. Respondents' Submission Agreements signed by Richard Gladstone on March 1, 1990 both individually and on behalf of MGHC and MG & Co.

Respondent, Oehl's, Statement of Answer to the claim and crossclaim which also included a counterclaim against Claimant and a crossclaim against MGHC, MG & Co. and Gladstone filed: March 24, 1990. Oehl's Submission Agreement signed: March 19, 1990.

Third Party Respondent, Rothschild, failed to file an Answer as required by Section 25 of the Code (see Other Issues).

Rothschild's Submission Agreement signed: July 19, 1991.

HEARING INFORMATION

On July 19, 1991 and June 16, 1992, in Tampa, Florida, hearings lasting 3 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, MGEC, MG & Co., Gladstone and Oehl, were liable for common law fraud, breach of fiduciary duty, and negligence. Claimant alleged that Respondents misrepresented the quality and potential profitability of a certain stock and failed to disclose various material facts and excessively marked-up the price of the stock.

Respondents, MGEC, MG & Co., and Gladstone, denied all allegations of wrongdoing and crossclaimed against Oehl for ultra vires conduct, breach of contract, breach of fiduciary duty and indemnification. MGEC, MG & Co., and Gladstone, also asserted a Third Party Claim against Rothschild for ultra vires conduct, breach of contract, breach of fiduciary duty and indemnification.

Respondent, Oehl, denied all allegations of wrongdoing and asserted a counterclaim against the Claimant and a crossclaim against MG & Co., alleging that he was not the broker of record and received no remuneration from any of the trades at issue in this case.

Respondent, MG & Co., denied all allegations of liability to Oehl.

Claimant denied all allegations of liability to Oehl.

Third Party Respondent, Rothschild, failed to file an Answer but appeared at the hearing to defend the Third Party Claim and denied all allegations of wrongdoing.

RELIEF REQUESTED

Claimant requested damages in the approximate amount of \$81,000.00, plus interest, costs, punitive damages, and such other relief as the Panel deems appropriate and requested dismissal of the counterclaim.

Respondents, MGEC, MG & Co., and Gladstone, requested dismissal of the claim and crossclaim and requested indemnification from Oehl and Rothschild, plus interest, costs and attorney's fees.

Respondent, Oehl, requested dismissal of the claim and counterclaimed for costs and attorney's fees and crossclaimed for costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

1. Respondent, Oehl, was dismissed with prejudice at the July 19, 1991 hearing.
2. Respondents, MGHC, MG & Co., and Gladstone, appeared at the July 19, 1991 hearing to defend the claim against them. Although the June 16, 1992 hearing was scheduled to hear Respondents' Third Party Claim against Third Party Respondent, Rothschild, Respondents/Third Party Claimants, MGHC, MG & Co., and Gladstone, did not appear at the June 16, 1992 hearing. This Panel finds that MGHC, MG & Co., and Gladstone, received due notice to them and, consequently, this Panel proceeded to consider the Third Party Claim as filed by those Respondents and, pursuant to Section 29 of the NASD Code of Arbitration Procedure, the Panel has rendered this Award as if those parties had appeared and prosecuted their claims.
3. Respondents, MGHC, MG & Co., and Gladstone's, Motion to Dismiss Gladstone and Motion to Preclude Rothschild from presenting defenses are hereby denied.
4. The Panel finds that Third Party Respondent, Rothschild was required, by Section 25 of the NASD Code of Arbitration Procedure, to file an Answer, Third Party Respondent, Rothschild being a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred.
5. On October 24, 1991, this Panel entered an Interim Order on Claimant's Claims against MGHC, MG & Co., and Gladstone. The rulings contained in that Interim Order are addressed in paragraph numbers 1, 2 and 3, of the "Award" section and paragraph number 1 of the "Other Costs" section of this Award.
6. The parties have agreed that the Award in this matter may be executed in counterpart copies of 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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, MGHC, MG & Co., and Gladstone, are found to have violated Chapter 517 of the Florida Statutes and are jointly and severally liable to the Claimant in the amount of \$80,000.00, plus interest at the legal rate of 12% per annum from April 10, 1987 to July 19, 1991, in the amount of \$41,059.00, for a total due to the Claimant of \$121,059.00.
2. Respondents, MGHC, MG & Co., and Gladstone, are also found liable, jointly and severally, for attorney's fees pursuant to Chapter 517 of the Florida Statutes, the amount of which shall be determined by a court of competent jurisdiction.

3. Respondents, MGHC, MG & Co., and Gladstone, are also found liable, jointly and severally, for punitive damages and shall pay to the Claimant the further amount of \$100,000.00. This Panel bases its authority to award punitive damages on the Federal Arbitration Act and the case law interpreting that act. This Panel finds that the conduct complained of was of such a character as to evidence an entire want of care, raising a presumption of conscious indifference to its consequences. This Panel finds that the conduct of Respondents, MGHC, MG & Co., and Gladstone, was of a wanton and reckless nature evidencing a gross and careless disregard for the safety and welfare of the Claimant as well as a reckless indifference to Claimant's rights so as to be equivalent to an intentional violation of Claimant's rights.

4. Third Party Respondent, Rothschild, is found not liable to Respondents MGHC, MG & Co., and Gladstone, and therefore, the Third Party Claim against him is hereby dismissed with prejudice.

OTHER COSTS

1. Respondents, MGHC, MG & Co., and Gladstone, are also found liable jointly and severally, for Claimant's expert witness, copying and other costs and shall pay to Claimant the further amount of \$2,649.67.

2. Respondents, MGHC, MG & Co., and Gladstone, are also assessed the \$750.00 postponement fee which should have been paid for the January 15, 1991 hearing.

3. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,250.00 (three sessions x \$750.00 per session). Respondents, MGHC, MG & Co., and Gladstone, are hereby assessed \$2,250.00, jointly and severally, \$550.00, of which shall be paid directly to the Claimant, and \$1,700.00, of which shall be paid to the National Association of Securities Dealers, Inc. The NASD shall retain the \$575.00 previously deposited by Respondents, MG & Co., and Gladstone, and shall retain the \$550.00 previously deposited by the Claimant, in partial satisfaction of such fees, leaving a balance due the NASD of \$1,125.00. Additionally, Respondents, MGHC, MG & Co., and Gladstone are hereby assessed and shall pay to Claimant the non-refundable filing fee of \$200.00. The NASD shall retain the \$200.00 non-refundable filing fee previously deposited by Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/
Guy E. Burnette, Jr., Esq.

Public

/s/
L. Matthew Byrd, Esq.

Industry

/s/
Allan J. Fedor, Esq.

Public

Date of Decision: July 27, 1992