

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Morton & Millie Feldman
Bradley K. Feldman
Stephen Feldman
Michael A. Feldman
Classic Optical, Inc. Profit Sharing Trust

90-00806

Name of Respondent

Marvin Zucker

REPRESENTATION

For Claimants Morton & Millie Feldman, Bradley K. Feldman, Stephen Feldman, Michael A. Feldman and Classic Optical, Inc. Profit Sharing Trust ("Claimants"): Anthony V. Trogan of Weisman Trogan et al.

For Respondent Marvin Zucker ("Zucker"): Gary Saretsky of Hertz, Schram et al.

CASE INFORMATION

Statement of Claim filed: March 12, 1990.

All Claimants' Submission Agreements signed on: March 7, 1990, with the exception of Classic Optical, Inc. Profit Sharing Trust's Submission Agreement which was signed on: October 8, 1991.

Statement of Answer filed by Respondent on: July 11, 1990.

Respondent's Submission Agreement signed on: July 11, 1990.

HEARING INFORMATION

Hearing Dates/Sessions: October 8, 1991/2 sessions
October 9, 1991/1 session

Hearing Location: Southfield, MI

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CASE SUMMARY

Claimants alleged each account was opened for the purpose of securities investment consistent with the investment goals of the individual account owners; however, investment decisions were directed by Morton Feldman ("Feldman"). Claimants stated that in May 1988, Feldman was contacted by Zucker who recommended the purchase of shares of Anacomp A.A.C. ("Anacomp"), based upon the certainty that Anacomp was a "takeover" candidate which would cause the per share price to increase by 50% in a few days. Claimants stated Feldman resisted Zucker's efforts but ultimately acquired a substantial number of shares of Anacomp. Claimants maintained Zucker assured Feldman the shares should not be sold each time he inquired about the stock. Claimant asserted he rejected Zucker's advice and sold his shares of Anacomp at a loss.

Claimants alleged the trading in all accounts was secured by the active or passive, intentional or negligent actions of Zucker or the failure by him to disclose material facts and information, all of which violated federal and state securities and anti-fraud statutes and case law.

Claimants alleged Zucker represented that: 1-he had researched Anacomp and that it was a sound acquisition; 2-Anacomp was a "safe" investment on its own merits, notwithstanding any takeover efforts; 3-he had non-public, confidential information concerning the takeover of Anacomp which guaranteed a substantial profit.

Finally, Claimants alleged Thomson McKinnon, Inc. was responsible for the actions of Zucker.

Respondent alleged Feldman is a multi-millionaire business executive. Respondent stated Claimants were happy with Zucker's performance prior to the Spring of 1988. Zucker stated he recommended Feldman purchase shares of Anacomp and that Feldman did not follow Zucker's recommendation initially. Zucker stated he and Feldman studied Anacomp over the succeeding weeks and when Feldman believed he had sufficient information he then began purchasing Anacomp in late May 1988. Zucker stated his recommendation of Anacomp was based upon his and others' diligent research of sources of information available to all members of the public.

Zucker alleged the Claimants' investment in Anacomp directly followed the "crash" of 1987 and their portfolios had sustained losses as a result. Zucker maintained Feldman instructed him to find investments that would provide them the opportunity to rapidly recoup their losses.

Zucker alleged that when he first mentioned Anacomp to Feldman it was trading at approximately \$8.50 per share; however, when Feldman made his initial purchase it was at \$10.75 per share. Zucker stated it peaked in June 1988 at

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approximately \$11.50 per share and due to this performance Feldman then initiated all subsequent purchases of Anacomp. Zucker stated the Claimants transferred all their accounts to another brokerage firm in January 1989.

Zucker also denied: 1-he promised Feldman a substantial and prompt profit on Anacomp; 2-he represented Anacomp as being a "safe" investment. However he did recommend Anacomp as an investment he believed to be suitable for the Claimants; 3-he was acting on "inside information"; 4-he engaged in unauthorized trading.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$93,500; attorneys' fees; costs; interest; and exemplary and punitive damages.

Respondent requested: the arbitrators rendered an arbitration award in his favor; attorneys' fees; and costs.

AWARD

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

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

1- Respondent Zucker is liable to the Claimants in the amount of \$30,976.00. The damages were assessed as follows:

a- Zucker shall pay to Morton and Millie Feldman the sum of TWENTY ONE THOUSAND TWO HUNDRED FOUR 00/100 DOLLARS (\$21,204.00);

b- Zucker shall pay to Bradley K. Feldman and Morton Feldman the sum of ONE THOUSAND TWO HUNDRED FOUR 00/100 DOLLARS (\$1,204.00);

c- Zucker shall pay to Stephen Feldman the sum of SIX THOUSAND SIX HUNDRED 00/100 DOLLARS (\$6,600.00);

d- Zucker shall pay to Michael A. Feldman the sum of FIVE HUNDRED THIRTY FIVE 00/100 DOLLARS (\$535.00);

e- Zucker shall pay to the Classic Optical, Inc. Profit Sharing Trust the sum of ONE THOUSAND FOUR HUNDRED THIRTY THREE 00/100 DOLLARS (\$1,433.00).

2- Respondent Zucker is liable to the Claimants for interest and shall pay to Claimants six percent (6%) interest from July 12, 1988 to the date of

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payment of this Award;

- 3- All other claims are dismissed;
- 4- The parties shall bear their own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$150.00 non refundable filing fee previously deposited and the following Forum Fees are assessed.

3 sessions X \$500.00 = \$1,500.00

Forum fees Assessed Against:

1- Claimants in the amount of \$750.00; however, Claimants may use their \$500.00 hearing session deposit to offset the forum fees due and owing and their \$100.00 overpayment of the hearing session deposit to offset the forum fees due and owing, therefore, the amount due and owing equals \$150.00;

2- Respondent in the amount of \$750.00.

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

CONCURRING ARBITRATORS

/s/
Donald Edwards/Public Arbitrator

/s/
Norman Bristol/Public Arbitrator

/s/
Jay Mackenzie/Industry Arbitrator

Date of Decision: November 20, 1991