

PUBLIC

NASD

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

John and Ronna Colman

90-01854

Name of Respondents

Westmont Securities, Inc.
Robert Sabel

REPRESENTATION

For Claimants John and Ronna Colman ("Claimants"): Anthony V. Trogan, of Weisman Trogan et al.

For Respondent Westmont Securities, Inc. ("Westmont"): Azar Kahn, a principal of Westmont; however, Mr. Kahn did not appear at the hearing, nor did Westmont file a Statement of Answer.

For Respondent Robert Sabel ("Sabel"): Brad Maistrow, of the law offices of Howard G. Meyers, Jr.

CASE INFORMATION

Statement of Claim filed: June 28, 1990.

Claimants' Submission Agreement signed on: June 28, 1990.

No Statement of Answer or Submission Agreement was filed by Respondent Westmont, as required, by the Code of Arbitration Procedure.

Statement of Answer filed by Respondent Sabel on: April 8, 1991.

Respondent Sabel's Submission Agreement signed on: this document was signed by Sabel on April 8, 1991; however, it was improperly notarized.

HEARING INFORMATION

Hearing Date/Sessions: March 5, 1992/2 sessions.

Hearing Location: Southfield, MI.

CASE SUMMARY

Claimants alleged they opened a securities account with Morgan, Olmstead, Kennedy & Gardner ("Morgan") through its correspondent, Westmont and agent, Sabel. Claimants alleged their business was solicited upon representations concerning the skill of Respondents and the safety of the investments recommended. Claimants alleged Respondents' trading for Claimants was

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unsuitable in that they purchased speculative securities and did not accurately disclose the risks of these investments. Finally, Claimants alleged Respondent Westmont did not supervise Sabel.

Respondent Westmont did not submit a Statement of Answer.

Respondent Sabel alleged Claimants represented themselves as experienced investors with a substantial net worth and interested in making speculative investments. Sabel maintained all securities recommended were suitable for Claimants based upon their stated experience, objectives and financial condition; that Claimants were advised of the risk of any securities recommended by Sabel; Claimants ratified all transactions entered in their account; Claimants were aware of the positions and the performance of the securities they purchased; and they were not entitled to punitive damages as a matter of fact and law.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$98,000.00; interest; exemplary and punitive damages; costs and attorneys' fees.

Respondent Westmont did not submit a formal request for relief.

Respondent Sabel requested: the arbitrators dismiss Claimants' claim and costs.

OTHER ISSUES CONSIDERED & DECIDED

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.

- 1- Pursuant to the by-laws of the NASD, this arbitration panel has determined that it has proper jurisdiction over Respondent Sabel and that Sabel is bound by this panel's rulings and determinations;
- 2- This arbitration panel has determined that proper service upon Respondent Westmont has not been possible;
- 3- This arbitration panel has determined that no decision can be rendered as to Morgan, Olmstead, Kennedy & Gardner ("Morgan"), an original Respondent, due to the U.S. Bankruptcy Court's automatic stay which went into effect on February 15, 1991 the date Morgan filed for bankruptcy protection.

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

- 1- Respondent Sabel is liable and shall pay to Claimants the sum of \$15,000.00;
- 2- Claimants shall transfer any Pacific Energy and Mining Company stock in their possession to Respondent Sabel;
- 3- The claim of Claimants against Respondent Westmont is dismissed, without prejudice;
- 4- All other claims are dismissed.

OTHER COSTS

- 1- Respondent Sabel is liable and shall pay to Claimants the sum of \$5,000.00 to represent attorneys' fees;

a- attorneys' fees are awarded by this arbitration panel upon reliance of MCLA 451.810(a); Prince v. Heritage, 109 Mich App 189 (1981); and Miley v. Oppenheimer, 637 F2d 318 (5th Circuit 1981).

FORUM FEES

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

2 sessions X \$500.00 = \$1,000.00 minus hearing session deposit of \$500.00 = net \$500.00 due.

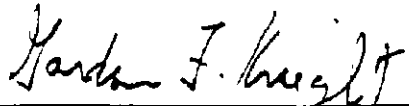
Forum fees Assessed Against:

- 1- Respondent Sabel, in the amount of \$1,000.00; however, Sabel shall reimburse Claimants the sum of \$500.00 to represent the hearing session deposit previously deposited. Therefore, the amount due and owing to the NASD equals \$500.00.

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

Concurring Arbitrators' Signatures


Gordon F. Knight/Public Arbitrator

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Concurring Arbitrators' Signatures

A handwritten signature in cursive script, appearing to read "Marc E. Thomas", written over a horizontal line.

Marc E. Thomas/Public Arbitrator

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Concurring Arbitrators' Signatures


Patrick R. Sughrue/Industry Arbitrator

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