

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

---

In the Matter of the Arbitration BetweenName of Claimant

Gwen K. Wilson

90-02384

Name of Respondents

Tucker Anthony Incorporated  
William D. Lackey

---

REPRESENTATION

For Claimant Gwen K. Wilson ("Claimant"): John R. Gamm, a sole practitioner.

For Respondents Tucker Anthony Incorporated ("TAI") and William D. Lackey ("Lackey"): Paul A. Liberman of TAI.

CASE INFORMATION

Statement of Claim filed: August 21, 1990.

Claimant's Submission Agreement signed on: August 19, 1990.

Joint Statement of Answer filed by Respondents on February 21, 1991.

Respondent TAI's Submission Agreement signed on: February 21, 1991.

Respondent Lackey's Submission Agreement signed on: March 12, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: July 23, 1991/2 sessions  
July 24, 1991/2 sessions  
September 11, 1991/2 sessions  
September 12, 1991/1 session  
October 03, 1991/2 sessions

Hearing Location: NASD, New York, New York.

AWARD  
#90-02384

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

### CASE SUMMARY

Claimant alleged Lackey induced her to open an account with TAI which she did in late April or early March of 1985. Claimant alleged Lackey promised he could increase her earnings and provide her with the means to have an immediate, ready source of funds without having to resort to credit cards or other lenders. Claimant stated she told Lackey she was dependent upon the dividends and interest as her sole source of income; had no experience in, or knowledge of, investment strategies (since her portfolio had always been managed by a corporate trustee) and would, therefore, rely on Lackey's judgment; and that preservation of capital was paramount.

Claimant alleged Lackey made an inappropriate number of transactions, heavily margined the securities, and entered into many option contracts. Claimant alleged these investments were not suitable for her needs. Claimant stated she had to sell securities to meet margin calls, pay account expenses and pay capital gains taxes resulting from the sales of the securities.

Claimant alleged Respondents did not warn her how option contracts and margin trading could adversely affect her account, nor did they consult with her regarding the purchase and sale of securities.

Claimant stated that by steadily increasing the margin ratio, Lackey increased Claimant's market exposure, distracted her from understanding actual trading losses, maximized option writing capacity and activity, and created greater commission opportunities. Claimants also contended Respondents churned her account.

Claimant asserted that during the decline of the Market in October of 1987 Respondents liquidated a large portion of the Account to maintain the 50% margin rate. Claimant contended the account could have retained the securities had her position been in cash instead of margin.

Finally, Claimant named G. Johnson and Mr./Ms. McKee as Respondents herein insofar as their respective names appeared on the Option New Account Form, dated March 28, 1985.

Respondents asserted Lackey has been employed at TAI since 1978, and with several firms in the securities industry since approximately 1963. Respondents alleged that in April 1985, Claimant's securities were delivered to TAI from her Bank Trust department and that she established a nondiscretionary margin, securities account with TAI's Portland, ME branch. Respondents stated the account was referred to Lackey by Claimant's brother, Calvin Kendall ("Kendall"), who had an existing account relationship with Respondents.

AWARD  
#90-02384

Respondents asserted Lackey wrote Claimant outlining his recommendations for her account and covered the following matters: dividend return on portfolio; increasing annual income; liquidation of certain holding over time to increase return and avoid capital gains taxes; satisfy immediate tax liability and credit card debt by margining the portfolio at a lower interest rate; and covered call writing strategy. Lackey stated he enclosed Option Risk Disclosure materials in this letter, several Freedom Fund prospectuses and a schedule of Claimant's holdings, providing market value, yield and estimated annual income as of March 28, 1985.

Lackey stated that based on his discussions and a personal meeting with Claimant he recommended she attempt to reduce her credit card indebtedness, satisfy her immediate tax obligations and restructure the portfolio with more conservative, but higher quality bonds so she would receive higher monthly income.

Respondents alleged Kendall suggested Claimant establish a margin account and pay off her credit cards debts with margin account indebtedness, thereby, saving some money in interest charges. Lackey stated he agreed with this plan and explained to Claimant how the margin account worked, whereby, Claimant promised him she would destroy her credit cards. Respondents alleged Claimant breached her promise to destroy her credit cards and continued to run up debts during 1985. Lackey stated he also explained to Claimant the strategy of writing covered calls. He also maintained he discussed this matter with Kendall.

Respondents alleged that in 1986, over Lackey's objections, Claimant invested over \$100,000.00 in a speculative transaction.

Respondents stated Claimant approved the sale of certain low quality stocks that had not been purchased at TAI and these stocks were sold at a loss. Respondents maintained all securities and option transactions were discussed in advance with Claimant, confirmed in writing and were reflected on the TAI monthly account statements and that she was aware of the size of the debt. Respondents asserted Claimant withdrew \$357,605.00, for the year 1986, from her account.

Respondents alleged that during August 1987, Claimant authorized liquidations of stocks to reduce margin indebtedness; however, she only wished to sell stocks that were not part of the portfolio originally delivered to TAI. Respondents maintained Claimant continued to follow Lackey's strategy to write covered calls, but decided to buy the option back instead of selling the stock. Respondents maintained they warned her about what would happen if the Market declined and that her failure to follow the recommended strategy could result in large margin calls and losses on the option trades.

Respondents asserted for the year 1987, Claimant withdrew \$259,859.00 and for

AWARD  
#90-02384

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

the year 1988, withdrew \$201,166.00. Respondents maintained Claimant wrote Lackey on November 29, 1988 and instructed him to "terminate any transactions" and transfer the account to Balding & Co. ("Balding"). Lackey stated he spoke with Balding many times and sent them copies of Claimant's monthly statements. Lackey asserted all further transactions were made through Balding with the exception of certain sales of securities Claimant directed Lackey to carry out. Respondents maintained no transfer instruction were sent to TAI directing the delivery of securities positions to Advest, Inc. as custodian. Respondents alleged Claimant withdrew a total of \$108,744.00 from her TAI account during 1989.

#### RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$750,000.00, plus interest; costs; and attorneys' fees.

Respondents requested: the claim be dismissed in its entirety; Johnson and McKee should be stricken as named Respondents; costs, and attorneys' fees.

#### AWARD

The parties have agreed 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- The claim of the Claimant, Gwen K. Wilson, is dismissed;
- 2- All other claims are dismissed;
- 3- 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 \$250.00 non-refundable filing fee previously deposited by Claimant and the following Forum Fees are assessed.

9 sessions X \$1,000.00 = \$9,000.00.

AWARD

#90-02384

Forum fees Assessed Against:

1- Claimant, in the amount of \$1,000.00. However, Claimant may use her \$1,000.00 hearing session deposit to offset the forum fees due and owing;

2- Respondent, Tucker Anthony Incorporated, in the amount of \$8,000.00.

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

Arbitrators' Signatures

/s/  
Lewis Silver/Industry Arbitrator

DATE OF DECISION: October 4, 1991