

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Carol Macdonald
Ross Macdonald

NASD Arbitration
No. 90-03324

Name of Respondents

Wedbush Morgan Securities
Gerard Kohler
Ronald G. Tracy

REPRESENTATION

For Claimant: Mitchel Cutler Green, Esq. Los Angeles, Ca.

For Respondent: Wedbush Morgan Securities, Inc. - David A. Jonas, Esq. pf
Milbank, STweed, Hadley & McCloy - Los Angeles, Ca.

For Respondent: Gerard Kohler - David C. Hinshaw, Esq. of Gansinger, Hinshaw &
Buckley - Los Angeles, California

CASE INFORMATION

Statement of Claim filed: November 23, 1990

Claimants' Submission Agreement signed on: November 16, 1990

Statement of Answer filed by Respondent, Wedbush Morgan Securities, Inc. on:
January 28, 1991

Statement of Answer filed by Respondent, Gerard Kohler, on January 21, 1991

Statement of Answer and Cross-Claim filed by Respondent, Gerard Kohler on
February 19, 1992

Respondent, Gerard J. Kohler's Submission Agreement signed on: February 19, 1992

HEARING INFORMATION

Pre-Hearing Conferences: October 28, 1991 One Session
 July 20, 1992 One Session

Hearing Dates/Sessions: January 28, 1992 Two Sessions
 July 30, 1992 Two Sessions
 July 31, 1992 Two Sessions
 October 26, 1992 Two Sessions
 October 27, 1992 Two Sessions
 Total Sessions Twelve Sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimants, alleged that Respondent, Gerard Kohler (Kohler), while employed by Morgan Olmstead Kennedy & Gardner, Inc. (MORG) under the supervision of Respondent Ron Tracy (Tracy) caused losses in claimants' account as a result of negligence, unsuitable securities transactions, misrepresentation, breach of fiduciary duty, fraud, failure to disclose risk and lack of supervision.

Claimant also alleged that Wedbush Morgan Securities (WMS), was the successor in interest to MORG and therefore assumed the liability for any damages caused in Claimants' account was with MORG.

Respondent, WMS, alleged that all the alleged wrongdoing in the Statement of Claim pertain to the time period before the late-1988 transaction whereby the parent of WMS acquired the outstanding stock of the parent of MORG and that no basis for liability of the part of WMS was shown.

Respondent, Tracy, alleged that was not the manager of record for MORG when the alleged wrongdoing occurred.

Respondent, Kohler, alleged that the Claimants did not depend on Kohler to make the final decisions with respect to their investments. Kohler contended that claimants relied upon their own judgement and knowledge, and/or that of other persons besides Kohler, one of whom was their CPA, in making investment decisions and used Kohler as a source of information and recommendations about investment decisions.

By way of cross-claim against WMS, Kohler alleged that if the allegations of the statement of claim are true with respect to any defects in the securities sold to claimant or with respect to the financial condition of the securities or their issuers, then WMS failed to discharge its duties to Kohler, for which it is obligated to defend and indemnify Kohler.

WMS answering Kohler's cross-claim alleged that the wrongdoing alleged in the Statment of Claim, including the acts of Kohler, pertain to the time period before the late-1988 transaction whereby the parent of WMS acquired the outstanding stock of the parent of MORG and that Kohler has demonstrated no basis for liability on the part of WMS for any such wrongdoing.

RELIEF REQUESTED

Claimants requested compensatory damages in an amount not yet determined but believed to be in excess of \$100,000.00; interest at the legal rate from the date of loss to the present; \$250,000.00 in additional mortgage payments claimants will incur as a result of the transactions at issue, punitive damages, costs and fees.

Respondent, Tracy, requested dismissal of the claim against Tracy in its entirety.

Respondent, Kohler, requested an award that claimants be awarded nothing on their claim and that he be awarded his fees, costs and expenses against claimants. Further, on his cross-claim, Kohler request a finding that he was acting within the course and scope of his employment and that he be awarded his costs of defense and his attorneys' fees incurred in his defense against respondent WMS and that it be order to indemnify him for any award rendered against respondents in this matter.

Respondent, WMS, without prejudice to its position that the NASD lacks jurisdiction to proceed against it in the within arbitration, denies that it is liable to cross-claimant, Kohler, in any way.

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 original(s) remain on file with the NASD.

For the purposes of adjudicating the claims asserted by Claimants herein, Wedbush Morgan Securities, Inc., has succeeded to the liabilities of Morgan, Olmstead, Kennedy & Gardner to said Claimants arising from the issues presented by their Statement of Claim.

Prior to the hearing, Claimant dismissed all claims against Respondent Ronald Tracy, without prejudice.

AWARD

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

1. Respondent, and Cross-Claimant, Gerard Kohler was, at all times herein mentioned, the Agent of Wedbush, Morgan Securities, Inc. (Wedbush) and acting within the course and scope of his employment.
2. Claimants, Carol and Ross Macdonald are not entitled to, and shall not recover, any additional sums or damages, over and above such amount as they shall have received from their settlement with Wedbush, from either Wedbush or Gerard Kohler.
3. Cross-Claimant, Gerard Kohler, as indemnitee, shall recover from Cross-Defendant, Wedbush, the sum of Fifty Thousand Dollars and No Cents (\$50,000.00) as as and for reimbursement for attorneys; fees and costs and expenses incurred in his defense of the within action.
4. No punitive damages are awarded.
5. Any and all filing fees paid by any of the parties for this arbitration shall be retained by the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. Claimants are assessed and shall pay to the NASD the sum of \$1,450.00 repr seating an assessment for one-third of the total of \$6,600.00 in forum fees assessed, less the previously deposited \$750.00.
2. Respondent, Wedbush, is assessed and shall pay to the NASD the sum of \$4,400.00 representing two-thirds of the total of \$6,600.00 in forum fees assessed.

Forum fees are based on two pre-hearing conferences at \$300.00 each, plus ten regular hearing sessions at \$750.00 each.

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

ARBITRATORS

Public/Industry
Public Chairperson
Industry Panelist
Public Panelist

Concurring Arbitrators' Signatures

George M. [Signature]

Date of Decision: Nov. 6, 1992

Served Nov. 18, 1992