

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Lynne and Richard Breyer

Claimants

91-00069

and

Cenpac Securities, Corporation and Carl J. Gottlieb

Respondents

REPRESENTATION OF PARTIES

Claimants were represented by Marc R. Lieberman, Esq. of Eaton, Lieberman and Dodge, Ltd. Phoenix, Arizona. Respondents were represented by Bradley P. Forst, Esq. of Tiffany and Hoffman, P.A., Phoenix, Arizona.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 3, 1991. Claimants Lynne and Richard Breyer ("Claimants") alleged that Respondent Carl Gottlieb ("Gottlieb") breached his fiduciary duty to Claimants by recommending the purchase of unsuitable investments, made negligent misrepresentations to Claimants, violated Section 12 (2) of the Securities Act of 1933, violated Section 44-1991 of the Arizona Securities Act and violated the Arizona Rico Statute. Claimants alleged that Respondent Cenpac Securities, Corp. ("Cenpac") was vicariously liable for Gottlieb's actions. Claimants asserted the foregoing causes of action in connection with their purchase of subordinated debentures in Interfirst Corporation, a Texas bank, on January 22, 1987. Gottlieb allegedly represented, among other statements, that the debentures were of high quality and that Interfirst could never go bankrupt because it was the sixth largest bank in the U.S. Gottlieb also recommended that Claimants purchase 100 shares of senior debentures in American Continental Corporation. Claimants were also sold debentures of First Republic Bank Corp. on February 13, 1987. Again Gottlieb allegedly assured Claimants that these debentures were of high quality. Thereafter, Claimants learned that Interfirst and American Continental declared bankruptcy. Gottlieb continually assured Claimants that the American Continental debentures could be liquidated but repeatedly talked them out of liquidating their position. Claimants then learned that First Republic Bank Corp. filed for bankruptcy.

In a Joint Statement of Answer filed on March 1, 1991, Cenpac and

Gottlieb alleged that Claimants were sophisticated business people and knowledgeable investors prior to their association with respondents. Mr. Breyer had allegedly taken and passed NASD securities examinations and the Claimants had substantial net worth and annual income. Claimants allegedly wanted a higher rate of return than they were getting in other investments. The debentures purchased for Claimants account represented only a small portion of their portfolio and these securities purchases were consistent with their investment objectives and circumstances. Cenpac and Gottlieb denied that any misrepresentations were made or that any breach of fiduciary duty occurred. Cenpac and Gottlieb asserted that Claimants wished to keep their winning investments and make Respondents guarantors of their unprofitable investments.

Claimants filed an Amended Claim on August 1, 1991 which increased the amount of requested damages.

Cenpac and Gottlieb answered the Amended Claim on August 15, 1991 and requested that the Amended Claim also be dismissed.

Claimants Replied to the Amended Answer on August 19, 1991 and asserted that the Amended Answer was untimely and should not have been accepted.

RELIEF REQUESTED

Claimants requested compensatory damages of between \$27,168 and \$28,546, pre-judgment interest at 10% per annum, treble damages, costs and reasonable attorney's fees. Cenpac and Gottlieb requested that the claims be dismissed in their entirety and that they be given an award of attorneys fees under Arizona Law. The Amended Claim increased claimed compensatory damages to between \$28,543 and \$30,428. Respondents requested dismissal of the amended claim.

OTHER ISSUES

The arbitration panel considered both the Claim and Amended Claim as well as the Answer and Amended Answer before deciding the case on the merits.

PROCEDURAL MATTERS

On September 12 and 13, 1991 in Scottsdale, Arizona during a hearing lasting a total of three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 31, 1990 by Claimant Lynne F. Breyer and on April 19, 1991 by Richard A. Breyer, on February 28, 1991 by W. P. Phillips, Chairman on behalf of Respondent Cenpac Securities Corp. and on February 28, 1991 by Respondent Carl J. Gottlieb.

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.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Cenpac and Gottlieb are jointly and severally liable for and shall pay to Claimants jointly, without interest, the sum of Twenty Three Thousand Eight Hundred Fifty-Two Dollars and Seventy-Five cents (\$23,852.75);
2. In consideration for receipt of the above sum, Claimants are to assign and transfer all interest and right Claimants hold in the \$10,000 face value of American Continental Debentures and \$20,000 face value of Interfirst Debentures which were the subject matter of this dispute to Cenpac;
3. The Claim for treble damages under Arizona Law is specifically denied and dismissed;
4. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and,

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Cenpac is assessed and shall pay to the NASD additional forum fees of \$500.00 and Gottlieb is assessed and shall pay to the NASD additional forum fees of \$500.00.

Panel Members Concurring

Dated:

George A. Schade, Jr.
Presiding Chair
Public Arbitrator

Wayne Kendall
Wayne Kendall
Public Arbitrator

Richard B. Bequette
Industry Arbitrator

Date Served By NASD

12-5-91

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

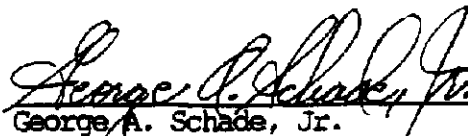
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Panel Members Concurring

Dated:

November 13, 1991


George A. Schade, Jr.
Presiding Chair
Public Arbitrator

Wayne Kendall
Public Arbitrator

Richard B. Bequette
Industry Arbitrator

Date Served By NASD

12-5-91

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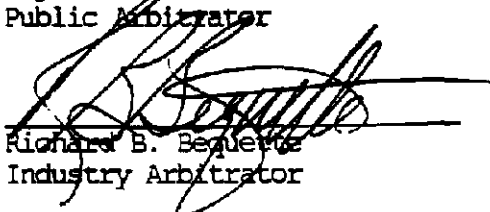
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11/13/91
Date Served By NASD 12-5-91