

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 Claimant(s)

Paul and Celia Kosofsky

91-01443

Name of Respondent(s)

Gary Goldberg & Co., Inc.
Gary Goldberg
Lesley Sommers

REPRESENTATION

For Claimant: Brian A. Carlis, Esq. of Stark & Stark, P.C.

For Respondent: Stephen G. Rinehart, Esq. of Parker Chapin Flattau & Klimpl

CASE INFORMATION

Statement of Claim filed: May 8, 1991.

Amended Statement of Claim filed: November 19, 1991.

Claimants' Submission Agreement signed on: May 2, 1992.

Statement of Answer filed by Respondents, Gary Goldberg & Company, Inc., Gary Goldberg and Lesley Sommers on: August 28, 1991.

Respondent, Gary Goldberg & Company, Inc.'s Submission Agreement signed on: August 23, 1991.

Respondent, Gary Goldberg's Submission Agreement signed on: August 23, 1991.

Respondent Lesley Sommers' Submission Agreement signed on: August 23, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: May 18, 1992 - Two Sessions
February 25, 1992 - Two Sessions
February 21, 1992 - Two Sessions
February 14, 1992 - Two Sessions
January 14, 1992 - Two Sessions
December 10, 1992 - Two Sessions

Hearing Location: NASD, New York, New York

CASE SUMMARY

Claimants, Paul and Celia Kosofsky ("Claimants"), alleged that they established an account with Respondent, Gary Goldberg & Co., Inc. ("Goldberg") which was under the direction of Respondent, Lesley Sommers ("Sommers"). Claimants alleged that Sommers told them that their investments were wrong and that to correct them, she would have to guide them. Claimants alleged that they had never invested in limited partnerships before, yet virtually all their money at Goldberg was invested into illiquid, high risk limited partnerships.

Claimants alleged that Sommers convinced them to invest in Woods on the Fairway Associates, LTD ("Woods"). Claimants alleged that Sommers signed the subscription documents as the their "Purchaser Representative" thus owing them a responsibility to act in their best interests. Claimants alleged that Sommers fraudulently inflated their financial data so that they would pass certain requirements needed in order to purchase this investment. Claimants alleged that Sommers never reviewed the prospectus with them, nor did she advise them of the risks involved in this investment.

Claimants alleged that they transferred their IRA accounts to Goldberg and Sommers, having complete control over the accounts, began purchasing limited partnerships in both IRA accounts. Claimants alleged that each new year IRA contribution was invested into additional limited partnerships. Claimants alleged that investing 75% of their portfolio into high risk, illiquid limited partnerships was unsuitable. Claimants alleged that when they asked Sommers about the limited partnerships, she told them that they were doing well and that they were carefully monitored by the firm and by Respondent, Gary Goldberg ("Gary Goldberg").

Claimants alleged that Gary Goldberg had supervisory responsibilities for Sommers' activities. Claimants alleged that Sommers made the investments in the limited partnerships in order to earn high commissions. Claimants alleged that all the limited partnerships invested in by Sommers have either declined in value or are bankrupt.

Respondents maintained that Sommers did not advise them that their investments were wrong. Respondents maintained that Sommers recommended that they buy additional life insurance and obtain disability insurance for Claimant Paul Kosofsky. Respondents maintained that, according to Claimants stated investment objectives of tax savings and planning for their children's college education funds, she recommended the appropriate tax, college and insurance plans.

Respondents maintained that Sommers did not have discretionary authority over the investments, and that each investment was approved by the Claimants. Respondents maintained that Sommers gave a prospectus to the Claimants with regard to the Woods investment and provided a prospectus to Claimants accountant and later discussed the ramifications of the investment with the accountant. Respondents maintained that this investment was recommended to meet the Claimants' objective of tax savings. Respondents denied that any financial information was fraudulently inflated by Sommers. Respondents maintained that the Claimants represented that they understood the nature and

risk of the investment and that they reviewed the private offering and had been informed of the risks involved.

Respondents maintained that Sommers recommended low-risk investments to Claimants, prepared a college plan and made recommendations for disability and tax planning. Respondents maintained that Sommers recommended two alternative investments for the two IRA accounts - zero coupon treasury bonds and the limited partnership. Respondents maintained that Claimants chose to invest in the limited partnership. Respondents maintained that when Claimant Celia Kosofsky received a pension distribution, Sommers advised that she split the proceeds into two investments, one of which continues to make distributions at a rate of 8% per year.

RELIEF REQUESTED

Claimants requested damages in the amount of \$116,031.00 plus punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that Claimants be assessed costs of this proceeding, including reasonable attorney's fees.

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.

AWARD

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

1. Respondents, Gary Goldberg & Co. Inc., Gary Goldberg and Lesley Sommers, are jointly and severally liable to Claimants and shall pay Claimants the amount of \$17,600.00. The proceeds are to be paid into Claimant Paul Kosofsky's IRA account.
2. Respondents are further liable for interest on the above amount at the rate of 9% from the date of this award to the date such award is paid.
3. All parties shall bear their respective costs of this action, including attorney's fees.
4. The Claim for punitive damages is denied.
5. All other claims and counterclaims, if any, are hereby denied in their entirety.

FORUM FEES

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

1. Claimants and Respondents are hereby each assessed one half of the forum fees of \$9,200 calculated as follows: \$200 non-refundable filing fee + \$9,000 forum fees (\$750 x 12 hearing sessions). Therefore, Claimants are assessed the amount of \$4,600 and Respondents are assessed the amount of \$4,600.
2. Claimants are entitled to offset this amount with their previously deposited filing fee and hearing session deposit of \$650 so that the amount due from the Claimants to the NASD is \$3,950.
3. Respondents shall pay to the NASD the total amount of \$4,600.

Concurring Arbitrator's Signature

C. Anthony Bell

Industry Arbitrator

C. A. Bell

Executed on
~~Date of Decision~~ 6-5-92

Date of Decision: July 7, 1992

FORUM FEES

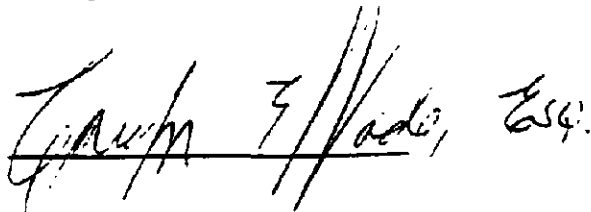
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3. Respondents shall pay to the NASD the total amount of \$4,600.

Concurring Arbitrator's Signature

Carolyn E. Wade, Esq.

Public Arbitrator



Date of Decision July 7, 1992

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3. Respondents shall pay to the NASD the total amount of \$4,600.

Concurring Arbitrator's Signature

Constantine N. Katsoris

Public Chairperson



Executed on
~~Date of Decision~~ 5/21/92

Date of Decision: July 7, 1992