

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Roland and Dorothy Shimel

91-01625

Name of Respondents

**Wakefield Financial Corp.
G.K. Scott & Co., Inc.**

REPRESENTATION

For Claimants: The Claimants appeared pro se.

For Respondent G.K. Scott & Co., Inc.: George Kevorkian of G.K. Scott & Co., Inc.

The Respondent Wakefield Financial Corp. did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: May 28, 1991

Claimants' Submission Agreement signed on: April 2, 1991.

Statement of Answer filed by Respondent G.K. Scott & Co., Inc. ("G.K. Scott") on: November 20, 1991.

Respondent Wakefield Financial Corp. ("Wakefield") did not file a Statement of Answer or execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Respondent G.K. Scott's Submission Agreement signed on: November 23, 1992.

HEARING INFORMATION

Hearing Date/Sessions: June 8, 1993, 2 sessions

Hearing Location: NASD offices located in Atlanta, Georgia.

CASE SUMMARY

Claimants alleged that during the period from November, 1988 through February, 1989, they were fraudulently induced by misrepresentations and omissions of material facts by Kenneth Stoops, the registered representative who directed and controlled Claimant's accounts, Wakefield and G.K. Scott to purchase shares of Topologix, Inc. for their individual retirement accounts at Wakefield and G.K. Scott. Claimants also alleged that the Respondents represented Topologix as a safe investment which would provide them with short-term growth, when to the contrary Topologix was a highly speculative investment, was significantly under-capitalized, and thus was unsuitable for the Claimants.

In addition, Claimants alleged that by making recommendations to them and by effecting transactions in their accounts, the Respondents committed acts constituting violations of federal and state securities laws, breach of fiduciary duty, violations of the rules of the NASD and NYSE, breach of contract, fraud and misrepresentation, and failure to supervise.

Respondent G.K. Scott maintained that the Claimants' accounts were transferred to G.K. Scott & Co., Inc. from Wakefield Financial Corporation on February 7, 1989. Respondent G.K. Scott further maintained that in addition to the existing shares of Topologix that the Claimants had accumulated while at Wakefield Financial Corp., the Claimants purchased additional shares of Topologix, Inc., as well as, Topologix, Inc. Warrants to lower the average price paid.

Respondent G.K. Scott also maintained that it is not uncommon for investors to purchase speculative securities in their IRA accounts because of tax benefits they would receive should the investments become fruitful. Furthermore, the Respondent, G.K. Scott, maintained that at all times the claimants' accounts were properly handled and supervised in accordance with securities laws, rules, and regulations and with the rules of the National Association of Securities Dealers, Inc.; there was never any written formal or verbal complaint registered by the Claimants regarding their investments until G.K. Scott received adverse publicity; Respondent G.K. Scott denied any allegation of failure to supervise and maintained at all times they maintained and enforced procedures which enabled the proper supervision of the activities of its registered representatives for the purpose of assuring compliance with applicable securities laws, rules, and regulations and with the rules of the NASD.

RELIEF REQUESTED

Claimants requested actual damages in excess of \$44,300.00, plus prejudgment interest, punitive damages, and all costs, expenses, and disbursements, including attorney's fees.

Respondent G.K. Scott requested that the Statement of Claim be dismissed in its entirety, with costs assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings with regard to the Respondent Wakefield Financial Corp.:

In accordance with section 1 of the Code of Arbitration Procedure, the panel ruled that it had jurisdiction over the Respondent Wakefield Financial Corp.;

In accordance with section 25 of the Code of Arbitration Procedure, the Respondent Wakefield Financial Corp. was served with the Statement of Claim and given an opportunity to respond which it failed to do;

In accordance with section 21 and section 26 of the Code of Arbitration Procedure, the Respondent Wakefield Financial Corp. was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;

In accordance with section 29 of the Code of Arbitration Procedure, the panel ruled that the Respondent Wakefield Financial Corp. had adequate notice of the hearing and determined to proceed with the Respondent Wakefield Financial Corp. as a party in its absence.

AWARD

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 Respondents Wakefield Financial Corp. and G.K. Scott & Co., Inc. are hereby jointly and severally liable and shall pay to the Claimants the sum of \$44,421.99 in actual damages minus a \$25,000.00 credit already received by the Claimants for a balance of \$19,421.99, interest specifically excluded.
2. The Respondents Wakefield Financial Corp. and G.K. Scott are also jointly and severally liable and shall pay to the Claimants the sum of \$5,697.33 in attorney's fees and all related costs pursuant to N.C. Gen. Stat. Section 78A-56 (1990).
3. The claim for punitive damages is hereby denied.
4. The Respondents Wakefield Financial Corp. and G.K. Scott & Co. are jointly and severally liable and shall reimburse to Claimants the sum of \$520.00, representing the fees previously paid by the Claimants to the NASD.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

2 sessions X \$400 = \$800.00 minus Claimants' hearing session deposit of \$400.00 = net \$400.00 due.


Forum fees Assessed Against:


1. Total forum fees in the amount of \$400.00 are hereby jointly and severally assessed against Respondents Wakefield Financial Corp. and G.K. Scott & Co., Inc.

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

ARBITRATORS' SIGNATURE


Daniel E. Gulden, Esq.
Public Arbitrator


Joseph Carlisi
Public Arbitrator


Ralph Bornheim
Industry Arbitrator

Date of Decision: July 14, 1993