

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 3, 1991, Claimants, Howard D. and Elsie L. Schmidt by and through their counsel, Thomas W. Donohue, Esq. of Titus Brueckner & Berry, P.C., Scottsdale, Arizona, alleged that in August 1989 they transferred their account to Respondent, David Goldring, a registered representative at Respondent, Yaeger Securities, Inc., at which time, they advised Respondents that the funds in their account represented a large portion of their life savings and their investment objective was for preservation of principal. Claimants further alleged that they notified Respondent, David Goldring that as unsophisticated, inexperienced investors, they were depending on him entirely for the management of their account, at which time, Respondent, David Goldring margined their account to the limit. Claimants contended that approval of their account for margin trading was apparently based on erroneous financial information on their new account form, which was not completed, reviewed or signed by Claimants. Claimants further contended that their net worth is approximately \$20,000.00 exclusive of their mobile home and their 1990 adjusted gross income for federal income-tax purposes was \$3,402.00, thus, trading on margin was clearly unsuitable for them considering their financial status. Claimants asserted that Respondent, David Goldring recommended and sold unsuitable, highly speculative stocks to Claimants by making material misrepresentations and omissions about the risks posed by trading on margin, at which time, he failed to warn Claimants of all the risks created by trading on margin and acquiring speculative stocks. Claimants further asserted that their entire account was liquidated in early October 1990 after they could not meet two margin calls, at which time, they suffered substantial losses as a result of the liquidation of their

portfolio. Claimants argued that this liquidation was a clear indication that trading on margin was unsuitable for them and Respondents, Yaeger Securities, Inc. and David Goldring should be held liable for their losses.

Respondents, Yaeger Securities, Inc. and David Goldring by and through their counsel, Judith K. Otamura-Kester, Esq. of Morgan, Lewis & Bockius, Los Angeles, California maintained that in April 1989, Respondent David Goldring became acquainted with Claimants, Howard D. and Elsie L. Schmidt through Christopher Walker, their registered representative at Young, Smith and Peacock, at which time, Mr. Walker was planning to leave the retail business and Young, Smith & Peacock was going out of business, therefore, Mr. Walker was transferring all his accounts to other brokers. Respondents further maintained that when Claimants opened their account at Respondent, Yaeger Securities, Inc., they informed Respondent, David Goldring that the money which Claimants had invested in stocks and which they had available for investing was to be used for speculation, at which time, they instructed Respondent, David Goldring he should be "aggressive" in trading in their account. Respondents contended that in order to open an account for Claimants they required certain personal information in order to prepare a New Account Information form and Respondent, David Goldring had received from Young, Smith & Peacock, a copy of their customer account form used for Claimants, at which time, Respondent, David Goldring contacted Claimants who confirmed that the personal information on the Young, Smith & Peacock customer account form was correct. Respondents further contended that when Respondent David Goldring contacted Claimants they informed him that they were retired, with an annual income of approximately \$40,000.00 and that their net worth was \$250,000.00, at which time, through these conversations Claimants advised him that they had traded on margin, had traded options and had five years of investment experience. Respondents asserted that when Claimants transferred their account to Respondent, Yaeger Securities, Inc. from Young, Smith & Peacock in September 1989, Respondent, Yaeger Securities, Inc. received a debit balance of \$717.69, thus, indicating that Claimants' account traded on margin, at which time, Claimants executed and delivered a Customer's Option Account Form and Agreement. Respondents further asserted that Claimants received monthly statements and confirmations of all transactions in their account and these statements kept them informed at all times of the status of their account, in addition to the margin debit balance, at which time, Claimants failed to try to mitigate their losses. Respondent argued that if Claimants had met the margin calls, their account would not have been sold out and subsequently when one of their stock increased from their purchase price of \$8.00 to \$24 5/8, they would have reaped the benefits.

RELIEF REQUESTED

Claimants, Howard D. and Elsie L. Schmidt requested \$10,000.00 in actual damages plus post-award interest at the legal rate of 10% per annum together with attorney's fees in the amount of \$3,000.00 and reimbursement of the \$150.00 NASD filing fee.

Respondents, Yaeger Securities, Inc. and David Goldring requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul J. Giancola, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on August 26, 1991, by the Respondent, Yaeger Securities, Inc. on October 15, 1991 and by the Respondent, David Goldring on November 21, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Yaeger Securities, Inc. and David Goldring are jointly and severally liable and shall pay to the Claimants, Howard D. and Elsie L. Schmidt the sum of \$2,500.00 in damages.
2. The Claimants request for interest is denied.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Howard D. and Elsie L. Schmidt shall be retained by the NASD, Inc. Respondents, Yaeger Securities, Inc. and David Goldring are jointly and severally liable and shall pay to the Claimants the sum of \$150.00 as reimbursement.

AFFIRMATION

I, PAUL J. GIANCOLA, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Paul J. Giancola

Signature of Arbitrator

DATE OF DECISION: July 7, 1992