



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Marc Lee Lopata)

Name of Respondent(s))

G K Scott & Co. Inc.)

Jeffrey Applebaum)

Case No. 91-03062

REPRESENTATION

For Claimant, Marc Lee Lopata ("Lopata"): pro se .

For Respondent, Jeffrey Applebaum ("Applebaum"): John B. Rogers, Esq. of John B. Rogers, P.A.

For Respondent, G.K. Scott ("G.K. Scott"): William S. Isenberg, Esq. of Latona & Isenberg.

CASE INFORMATION

Statement of Claim filed: October 1, 1991. Claimant's Submission Agreement signed on: November 13, 1991.

Respondent, G.K. Scott's, Statement of Answer filed: January 6, 1992.
Respondent, G.K. Scott's, Submission Agreement signed: January 3, 1992.

Respondent, Jeffrey Applebaum's, Statement of Answer filed: January 2, 1992.
Respondent, Jeffrey Applebaum's, Submission Agreement signed: December 27, 1991.

HEARING INFORMATION

On June 18, 1992, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents violated special state requirements of personal supervision, that Respondent, G.K. Scott exerted extraordinary pressures in the price fixing of certain securities and that G.K. Scott sold securities in violation of requirements regarding the "spread" between the Bid and Ask prices in connection with his account at G.K. Scott. Claimant maintained that he was an unsophisticated investor when, starting in February of 1989, Respondents violated their fiduciary responsibility toward him by

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using what they knew to be his entire savings to purchasing securities for him that were both unsuitable and unauthorized. Claimant further alleged that Respondents concentrated their purchases on securities that yielded large commissions-ComponentGuard, Topologix and Consulier. Claimant contended that Respondent, G.K. Scott, failed to supervise its employee, Applebaum.

Respondent, G.K. Scott, denied all allegations of wrong-doing contained in the statement of Claim and maintained that all trades in Claimant's account were done with Claimant's knowledge and consent. Respondent, G.K. Scott asserted the following affirmative defenses: That Claimant's Claims are barred by the Statute of Limitations; Claimant failed to mitigate his damages; Claimant failed to use due diligence with respect to the transactions complained of; that the alleged losses of Claimant were caused by his own conduct or negligence; Claimant's alleged losses were not proximately caused by any alleged misconduct of G.K. Scott or its employees; Claimant is barred from recovery by reason of unclean hands; Claimant is barred from recovery and/or any recovery must be reduced in accordance with the degree of Claimant's negligence by reason of the doctrine of comparative negligence. Respondent, G.K. Scott maintained that at all times it acted in good faith with respect to Claimant and his account.

Respondent, Applebaum denied each and every allegation of wrong doing asserted against him in the statement of Claim and maintained that Claimant was at all times, fully informed and aware of all investment decisions and investment actions both prior to and subsequent to such actions being taken. Respondent, Applebaum, asserted the affirmative defenses that: Claimant fully understood from the beginning the speculative nature of the investments involved and knowingly and consciously accepted the market risks; that if Claimant has sustained any losses such losses were occasioned by conduct of others, and not that of Applebaum; Claimant's Claim is barred by the doctrine of laches; Claimant's Claim is barred by the Statute of Limitations.

RELIEF REQUESTED

Claimant requested an Award in the amount of \$26,268.00 including legal fees and expert witness fees, plus interest.

Respondent, G.K. Scott, requested dismissal of the Claim plus attorneys' fees.

Respondent, Applebaum requested dismissal of the Claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

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MSRD

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

1. Respondents, G.K. Scott & Co., Inc. and Jeffrey Applebaum, are found not liable and, therefore, all Claims against them are hereby dismissed;
2. Respondent, G.K. Scott's request for Attorneys' fees is denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has assessed forum fees of \$600.00 (Two sessions X \$300.00).

Claimant is hereby assessed \$600.00 for which the NASD shall retain the \$300.00 previously deposited in partial satisfaction thereof, leaving a balance of \$300.00 owed by Claimant to the NASD.

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

ARBITRATOR

Arbitrators's Signature

/s/

Linda A. Singer Stein, Esq.
(Sole Public Arbitrator)

Date of Decision: July 30, 1992