

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between :
James & Verna Wilson :
Claimants : CASE #91-03417
vs. : AWARD
J.W. Gant & Associates, Inc. :
Kenneth Lowman :
Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 30, 1991, Claimants, James & Verna Wilson who appeared Pro Se, alleged that in July 1987 they opened an account with Respondent, Kenneth Lowman, a registered representative with Respondent, J.W. Gant & Associates, Inc. and made an initial investment of approximately \$15,000.00 which subsequently dropped in value to \$8,000.00. Claimants further alleged that they contacted Respondent, Kenneth Lowman for an explanation of the decline, at which time, Respondent, Kenneth Lowman stated that "If the value of their account drops below \$6,800.00 he will cut them a check for that amount and they will stop dealing with each other". Claimants contended that they continued to increase their investments with Respondents and were advised that they were considered "preferred customers". Claimant further contended that in July 1988 their account statement indicated an equity of \$7,000.00 less than the total amount invested, at which time Respondent, Kenneth Lowman advised them that this amount only represented the lowest selling prices for their stocks and their stocks were actually worth much more. Claimants asserted that Respondent, Kenneth Lowman recommended the purchase of Tofruzen stock by misrepresenting its future value and when it rapidly began declining, Respondent, Kenneth Lowman assured them about this offer to cut a check for \$6,800.00. Claimants further asserted that they invested a great deal of money with Respondents J.W. Gant & Associates, Inc. and Kenneth Lowman and have never received a penny in return, therefore, they are requesting that Respondents pay them the promised \$6,800.00.

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Respondents, J.W. Gant & Associates, Inc. and Kenneth Lowman by and through their counsel David A. Zisser, Esq. of Belinger Boyle Kaplan Zisser & Walter, Denver, Colorado, maintained that in July 1987 Claimants James & Verna Wilson determined to invest money with Respondents and admit that they had experience in investing in stocks. Respondents further maintained that Claimants made investments at a moderate pace between July, 1989 and September 1989 and throughout the life of the account, this modest trading resulted in both gains and losses. Respondents contended that Claimants never gave an instruction to liquidate their account at any price, moreover, Claimants continued to confer with Respondent, Kenneth Lowman, and maintain their account at Respondent, J.W. Gant & Associates, Inc. well after they knew their equity in the account had gone below \$6,800.00. Respondents further contended that they recommended the purchase of Tofruzen stocks because they believed the stock was trading well below previous levels, and there had been no negative news releases to warrant a decline in value. Respondents asserted that both Claimants and Respondent Kenneth Lowman carefully monitored the progress of the account, whereby Respondent Kenneth Lowman made recommendations based upon his best judgement and Claimants determined a course of action in what they considered to be in their best interest. Respondents further asserted that neither Respondent J.W. Gant & Associates, Inc. or Respondent, Kenneth Lowman breached any duty owed to Claimants, therefore, the claim should be dismissed.

RELIEF REQUESTED

Claimants, James & Verna Wilson requested \$6,800.00 in actual damages.

Respondents, J.W. Gant & Associates, Inc. and Kenneth Lowman 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, Louis W. Hargrave, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 26, 1991. and by the Respondents J.W. Gant & Associates, Inc. December 9, 1991 and not by Respondent Kenneth Lowman as required by Section 12 and 13 of the NASD Code of Arbitration Procedure.

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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. The claims of Claimants, James & Verna Wilson against Respondents, J.W. Gant & Associates, Inc. and Kenneth Lowman are dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants James & Verna Wilson shall be retained by the NASD, Inc. Respondents, J.W. Gant & Associates, Inc. and Kenneth Lowman are jointly and severally liable and shall pay to the Claimants the sum of \$125.00 as reimbursement.

AFFIRMATION

I, Louis W. Hargrave, 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.



Signature of Arbitrator

DATE OF DECISION: July 1, 1992