

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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))

James O. & Natalie F. Cross)

Case No. 91-03832

Name of Respondent(s))

G K Scott & Co. Inc.)

Michael R. Czaja)

Alan F. Pacella)

REPRESENTATION

For Claimants, James O. and Natalie F. Cross: Allan J. Fedor, Esq. of Fedor & Fedor.

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

For Respondent, Alan F. Pacella ("Pacella"): R. David Prescott, Esq. of Katz, Rutter, Haigler, Alderman, Davis, Marks & Rutledge, P.A.

Respondent, Michael R. Czaja ("Czaja") appeared pro se.

CASE INFORMATION

Statement of Claim filed: December 4, 1991. Claimants' Submission Agreement signed on: September 26, 1991.

Statement of Answer filed by Respondent, G. K. Scott on: January 24, 1992. Respondent, G.K. Scott's, Submission Agreement signed on: January 22, 1992.

Statement of Answer filed by Respondent, Michael R. Czaja, on: January 14, 1992. Respondent, Czaja's Submission Agreement signed on: February 3, 1992.

Respondent, Alan F. Pacella's Statement of Answer filed on February 27, 1992. Respondent, Pacella's Submission Agreement signed on: February 26, 1992.

HEARING INFORMATION

On May 11, 1992 a pre-hearing conference lasting one (1) session was conducted.

On May 18 and 19, 1992, in Tampa, Florida, hearings lasting four (4) sessions were conducted.

MMAD-#9103832

CASE SUMMARY

Claimants alleged that Respondents engaged in a pattern of criminal activity in connection with their purchase for Claimants account at G.K. Scott of Laser Precision, Savoy Minerals, Jerrico, Inc. calls, AFL calls, Bankers Note and Electronic Technology Group. Claimants alleged that Respondents course of conduct and dealings violated Florida Securities Laws under F.S. 5517.301; violated Rules of the NASD; Breached their Fiduciary Duty to Claimants; Constituted Common Law Fraud; Constituted Negligence or Gross Negligence; constituted Civil Theft under F.S. 55812.014, 772.11; constituted criminal practices under F.S. 5772.104.; churned Claimants' Account 6.747 times; illegally marked up securities over the NASD 5% rule. Claimants further alleged that G.K. Scott was responsible for the conduct of Respondents, Pacella and Czaja for failing to supervise them under both Rule 27 of the NASD Rules of Fair Practice and the common law theory of respondent superior. Additionally, Claimants alleged that Respondents were liable for the sale of Laser Precision and Bankers Note based on so-called "inside information"; the sale of Savoy Minerals based on fraud and misrepresentation; the sale of Jerrico, Inc. and AFL calls in illegal options trading; and the sale of Electronic Technology Group based on stock manipulation and illegal markups, all involving a pattern of illicit activity.

Respondent, G.K. Scott, denied all allegations of wrong doing contained in the Statement of Claim and maintained that it neither churned Claimants' account nor purchased unsuitable securities for them. Additionally G.K. Scott asserted the following affirmative defenses: Claimants failed to mitigate their damages; Claimants failed to use due diligence with respect to the transactions complained of and, accordingly, are barred from asserting or recovering for any such transactions or acts; the alleged losses of Claimants were caused by their own conduct or negligence in relation to the transactions complained of by them, therefore, Claimants are precluded from recovery; Claimants' alleged losses were not proximately caused by any alleged misconduct of G.K. Scott or its employees and Claimants, therefore, are precluded from recovery; Claimants are barred from recovery by reason of unclean hands; Claimants are barred from recovery and/or any recovery must be reduced in accordance with the degree of Claimants' negligence by reason of the doctrine of comparative negligence; Respondent, G.K. Scott, at all times acted in good faith with respect to Claimants and their account.

Respondent, Czaja, denied all allegations of wrong doing against him contained in the Statement of Claim and further stated that Claimants' statement of not being able to sell their stock and a 25% commission is completely false.

Respondent, Pacella, categorically denied all allegations set forth in Claimants' Statement of Claim as false, frivolous and inflammatory and maintained that Claimants were experienced investors in the over-the-counter market who knew or should have known that mark-ups or mark-downs were not disclosed on confirmations and therefore there was no cover-up. Pacella further denied ever using the words "guaranteed", "quick buck" and "could take it to the bank" in connection with Claimants' investments, as stated in the Statement of Claim.

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RELIEF REQUESTED

Claimants requested compensatory damages in the amount of the purchase price paid for their investments (approximately \$67,000.00) plus interest at 12% per annum from the date of each payment. Claimants also requested trebled damages, costs, expenses, disbursements including attorneys' fees, punitive damages and such other relief the arbitration panel would deem just and proper.

Respondents requested dismissal of the Claim.

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 and the post-hearing submissions the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, G.K. Scott & Co., Inc., Alan F. Pacella and Michael Czaja, are found jointly and severally liable and shall pay to Claimants the sum of Fifteen Thousand Seven Hundred Four Dollars and Eighty One Cents (\$15,704.81) including interest;
2. Claimants' Claims for trebled damages, punitive damages costs and attorneys' fees are hereby denied;
3. Each party shall bear its own costs including attorneys' fees.

MAED-891-03832

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure the arbitration Panel has assessed forum fees in the amount of \$3,300.00 (Four (4) hearing sessions X \$750.00 + One (1) Pre-Hearing Telephone Conference held 5/11/92 X \$300.00).

Claimants are hereby assessed forum fees in the amount of \$1,650.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof. Thereby, Claimants owe forum fees in the amount of \$900.00;

Respondents, G.K. Scott & Co., Inc., Alan F. Pacella and Michael R. Czaja, are hereby jointly and severally assessed forum fees in the amount of \$1,650.00.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
Stephen P. Savitt, Industry

/s/
Hal S. Holsinger Public

/s/
George S. Coit, Jr., Esq. Public

Dated: July 29, 1992