

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants
Calvin & Dolores Mason

91-03860

Name of Respondents
F.N. Wolf & Co., Inc.
Richard T. Sullivan
Robert Clark Smith

REPRESENTATION

For Claimants Calvin and Dolores Mason ("Claimants"): Daniel A. Ball, Attorney at Law

For Respondents F.N. Wolf & Co., Inc. ("F. N. Wolf"), Richard T. Sullivan ("Sullivan") and Robert Clark Smith ("Smith"): James C. Cosby of the law firm of Maloney, Yeatts & Barr

CASE INFORMATION

Statement of Claim filed: December 5, 1991

Claimants' Submission Agreement signed on: July 31, 1991

Joint Statement of Answer filed by Respondents F.N. Wolf, Sullivan and Smith (collectively referred to as "Respondents") on: January 29, 1992.

F.N. Wolf's Submission Agreement signed on: January 28, 1992.

Respondents Sullivan and Smith did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: October 22, 1992 - three sessions, October 23, 1992 - one session

Hearing Location: NASD Office, Washington, D.C.

CASE SUMMARY

Claimants alleged that Smith made material misrepresentations to Claimants' to induce Claimants to invest with Respondents. Claimants alleged that they were unsophisticated investors who trusted Respondents to help them place their retirement funds in investments that offered a good return with little risk. Claimants alleged that Smith induced them to invest their monies into

investments that did not meet their stated investment objectives and were too risky. Claimants alleged that Smith, at the time of each investment, failed to disclose that F.N. Wolf was a market maker in each investment that Smith encouraged Claimants to purchase. Claimants alleged that when they complained to Respondents about the mishandling of their accounts, Respondents failed to respond to their complaints. Claimants alleged Respondents breached their fiduciary duty of fair dealing with the Claimants. Claimants alleged that Respondents induced Claimants to purchase securities in which Respondents would receive dealer mark ups, commissions and other fees for Respondents. Claimant alleged that Respondents investment strategy was for Respondents' benefit rather than the Claimants.

Respondents denied each and every allegation of wrongdoing. Respondents denied any liability to Claimants for any losses they may have sustained as a result of investments made by them through F.N. Wolf. Respondents maintained that Sullivan sole involvement in this matter had been to respond to Claimants inquiries concerning their accounts. Sullivan maintained that he had no involvement of any kind in the investment decision made by Claimants. Sullivan maintained that he should be dismissed as a party to this arbitration. Respondents maintained that in connection with each investment that Smith disclosed the risk attendant to each security and determined that each investment was suitable for Claimants. Respondents maintained that each investment met with Claimants stated investments objective and that Respondents did not breach any duty of fair dealing. Respondents maintained that they cannot be held responsible for normal market risks. Respondents maintained that they neither guaranteed the Claimants against losses in their accounts nor did Respondents guarantee to Claimants any gains.

RELIEF REQUESTED

Claimants requested damages in excess of \$20,000 or that all transactions be rescinded.

Respondents requested that Claimants' claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to the by-laws of the NASD, the panel determined that Sullivan and Smith were required to submit to this arbitration, notwithstanding their failure to submit executed Submission Agreements. Therefore, Sullivan and Smith are bound by the rulings of this panel.

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.

At the conclusion of Claimants' case, Respondents moved to dismiss Sullivan based upon the absence of any evidence of wrong-doing on Sullivan's part.

Claimants' did not oppose this motion, and the panel entered an order of voluntary dismissal with respect to Sullivan.

AWARD

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

1. Claimants' claims regarding their retirement accounts are granted to the following extent: The purchase of Wolf Financial Group (1700 shares), Non-Invasive Monitoring System (2500 shares), Lidak Pharmaceutical-Class A (2200 shares), Lidak Pharmaceutical-Warrants Class A (8000 warrants), Bristol Research Corp. (1425 shares), Digital Products Co. (1500 shares), Nacoma Consolidated Industries, Inc. (1500 shares), in Claimant Calvin Mason's retirement account (#ERG-802264-86) are rescinded. Claimant Calvin Mason is ordered to transfer these securities and securities in successor companies, if any, immediately to F.N. Wolf (except for Lidak warrants which have been called/expired). The purchases of Wolf Financial Group (300 shares) and Lidak Pharmaceutical-Warrants Class A (5000 warrants) in the retirement account of Claimant Dolores Mason (#ERG-802272-86) are rescinded. Claimant Dolores Mason is ordered to transfer these securities immediately to F.N. Wolf (except for the Lidak warrants which have been called/expired). Respondents F.N. Wolf and Smith are jointly and severally liable to the Claimants in the amount of ~~\$23,732.24~~ ^{29,534.23}. This amount represents the purchase price of the securities listed above, reduced on account of the Claimants' failure to mitigate their damages. This amount shall be payable immediately into the respective retirement accounts noted above maintained by Claimants with Respondent F.N. Wolf, or successor accounts, if any. The amount payable to Claimant Calvin Mason's account is ~~\$17,990.25~~ ^{23,732.24}. The amount payable to Claimant Dolores Mason's account is \$5,801.99. ^{23,732.24}
2. The Claimants' claim with respect to their joint account (#ERG-023010-086) is denied in its entirety as are all other claims made by Claimants.
3. The parties shall each bear their respective costs, including attorney's fees.

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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees are equally assessed against Claimants and Respondents F.N. Wolf and Smith as follows:

Claimants are assessed forum fees in the amount of \$800 to cover the cost of two of the four hearing sessions conducted in this matter. Claimants, however, are entitled to offset this amount with their hearing session deposit of \$400, so that the amount due from the Claimants is \$400.

Respondents F.N. Wolf and Smith are jointly and severally assessed forum fees in the amount of \$800 to cover the cost of two hearing sessions conducted in this matter.

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

Concurring Arbitrator's Signature

Name

Joseph E. Godridge, Jr.
Joseph E. Godridge, Jr.

Public/Industry

Industry

Date of Decision:

10/23/92

NASD Date of Decision: December 7, 1992

FORUM FEES

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Concurring Arbitrator's Signature

Name

Stephen Crable
Stephen Crable

Public/Industry

Public

*as modified by
initialled changes
in amounts and pay
3 of the Award.*

Date of Decision: November 30, 1992

NASD Date of Decision: December 7, 1992

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Mason Award

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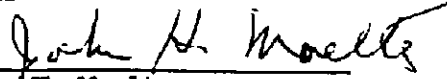
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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

Public/Industry



John H. Moelter

Date of Decision: 10/23/92

NASD DATE OF DECISION: December 7, 1992