

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Raymond Smith
Isabelle M. Smith

vs.

92-00198

Name of Respondents

Sutro & Co. Incorporated
Kirk G. Aguer

REPRESENTATION

For Claimants: Joseph L. Stogner, Esq., O'Brien, Watters, Davis & Piasta,
Santa Rosa, California

For Respondent Sutro & Co. Incorporated: Jeffrey J. Cole, Esq., Jackson,
Tufts, Cole & Black, San Francisco, California

For Respondent Kirk G. Aguer: Bruce Bryson, Esq., San Rafael, California

CASE INFORMATION

Statement of Claim filed: January 17, 1992

Claimants' Submission Agreements signed on: January 9, 1992

Statement of Answer filed by Respondent Sutro & Co. Incorporated ("Sutro"):
March 23, 1992

Respondent Sutro's Submission Agreement signed on: March 24, 1992

Statement of Answer filed by Respondent Kirk G. Aguer on: March 23, 1992

Respondent Kirk G. Aguer's Submission Agreement signed on: October 6, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Dates/Sessions: October 7, 1992 (two sessions)
October 9, 1992 (two sessions)
October 12, 1992 (one session)
October 16, 1992 (two sessions)
November 6, 1992 (two sessions)
November 9, 1992 (two sessions)
November 10, 1992 (two sessions)
November 16, 1992 (two sessions)
November 17, 1992 (three sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimants alleged violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, breach of contract to provide professional services, breach of fiduciary duty, intentional misrepresentation, negligent misrepresentation and violation of the California Corporate Security Law of 1968 with respect to VMS Mortgage Investment Fund and JBM Mortgage Securities L.P. Preferred Units investments.

Respondent Sutro alleged that it did not commit any acts, make any misrepresentations or do anything that would subject it to any liability to Claimants for the losses allegedly suffered as a result of their investments in their Sutro account.

Respondent Kirk G. Aguer alleged that he did not commit any acts, make any misrepresentations or do anything that would subject him to any liability to Claimants for the losses allegedly suffered as a result of their investments in their Sutro account.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in the sum of at least \$77,000.00 with interest thereon, plus additional damages, including lost profits, according to proof;
2. Punitive damages in an amount sufficient to punish Respondents and deter their conduct;
3. Claimants' costs of arbitration, including reasonable attorney's fees incurred in this arbitration; and
4. Such other and further relief as the Arbitration Panel deems just and proper.

Respondent Sutro requested that Claimants recover nothing on their Claim and that it be reimbursed for costs incurred in this proceeding.

Respondent Kirk G. Aguer requested that Claimants recover nothing on their Claim and that he be reimbursed for costs incurred in this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Claimants waived all claims, outlined in the Case Summary portion of the Award, with the exception of the claim for breach of fiduciary duty.

Respondents did not present evidence or arguments with respect to Statute of Limitations or Statute of Fraud theories.

At the hearing, Respondents agreed that if Kirk G. Aguer is found liable to Claimants for any damages, Sutro is also liable.

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 National Association of Securities Dealers, Inc. (NASD).

AWARD

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

1. Respondents Sutro and Kirk G. Aguer are jointly and severally liable for and shall pay to Claimants the sum of \$79,880.00, inclusive of interest.
2. Claimants' request for punitive damages is denied.
3. Claimants' request for attorney's fees is denied.
4. The parties shall each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$500.00 hearing session deposit previously deposited by the Claimants. Forum fees assessed against:

Respondents Sutro and Kirk G. Aguer, jointly and severally, in the amount of \$9,000.00, calculated as follows: Eighteen hearing sessions times \$500.00/session.

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

ARBITRATION PANEL

Public/Industry

Public Arbitrator

Public Arbitrator

Industry Arbitrator


Frank Weaver

Date of Decision: _____

Date Served: 12/10/92