

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimant(s)

Henry & Linda Davidson

92-00211

Name of Respondent(s)

Silver, Gray & Co., Inc.
Fredric Gray
Gerry Gray
Robert Kahan
Richard Gray

REPRESENTATION

For Claimants Henry and Linda Davidson: Douglas Capuder, Esq. of the law firm of Capuder & Associates, P.C.

For Respondents Silver, Gray & Co., Inc., Fredric Gray, Richard Gray and Gerry Gray: Lawrence J. Toscano of the law firm of Heller, Horowitz & Feit, P.C. The Respondents Gerry Gray and Richard Gray did not attend the hearing.

For Respondent Robert Kahan: Robert C. Beers, P.C.

CASE INFORMATION

Statement of Claim filed: January 16, 1992.

Amended Statement of Claim filed: September 10, 1992.

Claimant's Submission Agreement signed on: January 10, 1992.

Joint Statement of Answer filed by Respondents Silver, Gray & Co., Inc. and Fredric Gray on: April 5, 1992.

Statement of Answer filed by Respondent Robert Kahan on: October 8, 1992.

Respondents Richard Gray and Gerry Gray did not file a Statement of Answer and execute Submission Agreements as required pursuant to Section 25 of the Code of Arbitration Procedure.

Respondents Silver, Gray & Co., Inc. and Fredric Gray's Submission Agreements signed on: April 20, 1992.

Respondent Robert Kahan's Submission Agreement signed on: October 5, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: April 2, 1993 / Two Sessions
 April 3, 1993 / Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimants alleged that Respondents made false and misleading statements and omissions in connection with Claimants' purchase of securities, and engaged in fraud, recommending and purchasing unsuitable investments for the Claimants and breached the fiduciary duty owed to Claimants. Claimants further maintained these allegations are based on a transaction by Mr. Fredric Gray for the Davidsons, involving Western Union preferred stock and Claimants informed Fredric Gray they were seeking a safe investment that would generate some income and they could not afford to risk capital but wanted income at or above passbook rates. The Claimants further alleged that despite some reservation, they agreed to the transaction, because Fredric Gray had assured and guaranteed them that this was a "no risk" opportunity that would net them a profit of at least \$8,000.00 and relying on Fredric Gray's promises and guarantees, agreed to the transaction. The Claimants further alleged that after they experienced delays in realizing their profits on the transaction, Fredric Gray gave them reasons and assurances contrary to those given to the Davidsons by the financial officer of Western Union itself and failed to send a prospectus to the Claimants when requested to do so. Claimants further alleged that Fredric Gray twice talked them out of selling their position in Western Union, thus causing them substantial loss when eventually Silver, Gray & Co., Inc. closed down operations. Claimants further maintained Respondents Richard Gray, Fredric Gray, Robert Kahan and Gerry Gray were officers of Silver, Gray & Co., Inc. responsible for maintaining and diligently enforcing proper systems of internal supervision and control and were controlling persons within the meaning of the securities laws of the U.S. and they failed to discharge their responsibilities properly and this failure makes them liable to the Claimants for their losses. Claimants further alleged that both Fredric Gray and Richard Gray by virtue of their positions as compliance officers were or should have been aware of the risky nature of the Western Union venture and should have advised the Claimants.

Claimants further alleged Fredric Gray admitted he was responsible for the Claimants' losses and would compensate them somehow but failed to do so.

Respondent Robert Kahan denied all allegations that he committed any fraudulent acts or that he had any supervisory authority or responsibility and maintained he had no supervisory authority over any of the other Respondents and had no compliance function. Respondent Robert Kahan further maintained if the arbitrators determine that he was a control person, he acted in "good faith" and did not directly or indirectly induce the acts complained of and the claim fails to state a cause of action against this Respondent.

Respondents Silver, Gray & Co., Inc., and Fredric Gray, maintained Claimant Henry Davidson was an experienced and sophisticated investor who prided himself on being a student of the securities market and he was well aware of the risks in securities investments and in connection with all investments that Claimants made through Fredric Gray, Henry Davidson was advised of all pertinent facts concerning the proposed investments and made his own decisions as to whether to invest and the amount to be invested. Respondents Silver, Gray & Co., Inc., and Fredric Gray, further maintained Claimant Henry Davidson never told Fredric Gray he could not afford to risk capital and Fredric Gray never stated there would be a guaranteed profit on the investment in Western Union and Claimant selected the amount of his investment in Western Union without any input from or discussion with Fredric Gray. Respondents Silver, Gray & Co., Inc., and Fredric Gray further maintained Respondent Fredric Gray never refused to liquidate Claimants' positions and discussed the situation involving Western Union at various times and the decision to wait and not liquidate the position was that of the Claimants and Respondent Fredric Gray did not initially refuse to make the prospectus available to Claimants and only when Claimants told Fredric Gray he was going to bring an action against Fredric Gray and demanded a copy of the prospectus did Fredric Gray refuse to send him a copy. Respondents Silver, Gray & Co., Inc. and Fredric Gray further maintained Respondent Fredric Gray never advised the Claimants he was responsible for their loss or that he would compensate them but did tell them he was sorry they had sustained a loss and hoped he would be able to bring additional profitable investment opportunities to their attention in the future so they could recoup their losses. Respondents Silver, Gray & Co., Inc., and Fredric Gray further maintained the Western Union investment opportunity was an investment that Respondents Silver, Gray & Co., Inc., and Fredric Gray, in good faith, believed was a proper investment for Claimants, having excellent potential for profit and Claimants made their investments being fully aware of all of the pertinent facts and risks of the investment and there was no "false and misleading statements and omissions," "fraud, unsuitability" or "breach of fiduciary duty" by Respondents Silver, Gray & Co., Inc., and Fredric Gray, and Claimants' arbitration claim is no more than a transparent attempt to shift their market losses to their broker.

RELIEF REQUESTED

Claimants requested: damages of \$30,544.72 plus interest and attorneys' fees.

Respondents Silver Gray, Fredric Gray, Richard Gray and Gerry Gray requested that the Statement of Claim against them be dismissed and all costs be assessed against the Claimants.

Respondent Robert Kahan requested an award dismissing the claim and that costs and disbursements including attorneys' fees be assessed against the Claimants.

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. The Respondent Robert Kahan's Motion to Dismiss all claims against him is granted.
2. All claims against Respondents Richard Gray and Gerry Gray be and hereby are dismissed in all respects.
3. The Respondents Silver, Gray & Co., Inc. and Fredric Gray be and hereby are liable jointly and severally and shall pay to the Claimants the sum of \$5,250.00 plus simple interest at the rate of 9% per annum from the date of decision until the date of payment of the award.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions x \$400.00 = \$1,600.00 less Claimant's hearing session deposit (\$400.00)
= \$1,200.00 due.

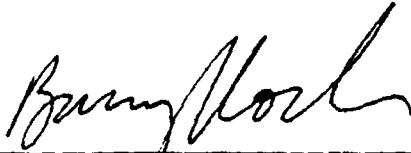
Forum fees Assessed Against:

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$133.00 to represent forum fees and Respondent Silver, Gray & Co., Inc. be and hereby is liable and shall pay to the NASD the sum of \$534.00 to represent forum fees and the Respondent Fredric Gray be and hereby is liable and shall pay to the NASD the sum of \$533.00 to represent forum fees.

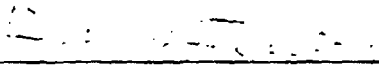
Page 5
Award #92-00211

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

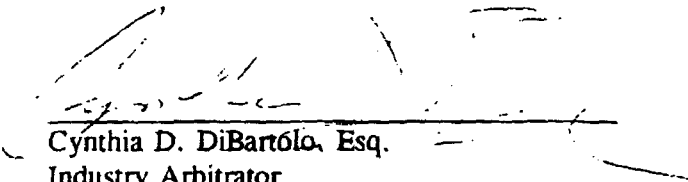
ARBITRATORS' SIGNATURES



Barry Koch, Esq.
Public Arbitrator



Barry Feiden
Public Arbitrator



Cynthia D. DiBartolo, Esq.
Industry Arbitrator

Decision Dated: June 1, 1993

STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this *14th* day of *April*, 1993, before me personally appeared **Barry Koch, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

ERIC LEVEN
Notary Public, State of New York
No. 31-4986982
Qualified in New York County
Term Expires Sept. 22, 1994

Eric Leven

STATE OF: *NY*

SS:

COUNTY OF: *West*

On this *23rd* day of *April*, 1993, before me personally appeared **Barry Feiden** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Barry Feiden

STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this *1st* day of *June*, 1993, before me personally appeared **Cynthia D. DiBartolo, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Alexander Bienewitz

ALEXANDER BIENEWITZ
Notary Public, State of New York
No. 41-49729-2
Qualified in Queens County
Commission Expires October 9, 1994