

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Glenn W. Sedgwick. Trustee of the Glenn W. Sedgwick
Living Trust:

92-01359

Name of Respondents

Tucker Anthony Incorporated. d/b/a Gabriele.
Hueglin & Cashman:
Steven B. Paskal

REPRESENTATION

For Claimant: Glenn W. Sedgwick, Trustee of the Glenn W. Sedgwick Living Trust ("Sedgwick") was represented by William J. Travis, Esq. of Greensfelder Hemker & Gale, P.C., located in St. Louis, Missouri.

For Respondent: Tucker Anthony Incorporated ("Tucker Anthony"), d/b/a Gabriele, Hueglin & Cashman ("GH&C"), and Steven B. Paskal ("Paskal") were represented by Patrick J. Howley, Esq. of Tucker Anthony Incorporated, New York, New York.

CASE INFORMATION

Statement of Claim filed: April 20, 1992.

Claimant's Submission Agreement signed on: July 27, 1992.

Consolidated Statement of Answer filed by Respondents on: July 10, 1992.

Respondent Tucker Anthony Incorporated, d/b/a Gabriele, Hueglin & Cashman's Submission Agreement signed on: July 13, 1992.

Respondent Steven B. Paskal's Submission Agreement signed on: July 13, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 11, 1993 for One (1) session before One Arbitrator.
Hearing Date/Sessions: June 15, 1993 for Two (2) sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimant Sedgwick alleged that Respondent Paskal, while employed by or acting as an agent for Respondent Tucker Anthony, doing business as GH&C, made numerous, material misrepresentations and omissions to Sedgwick in connection with the purchase of securities. Sedgwick specifically alleged that:

1. Sedgwick was introduced to Pascal and GH&C as municipal bond specialists in 1986. Sedgwick advised Pascal that he was an extremely conservative investor with the following investment criteria:
 - a. Safety always as to principal with proper guarantees, and always with good ratings;
 - b. Reinvest all interest so as to realize the yield to maturity as quoted;
 - c. No need to be concerned with value fluctuations, as all bonds were purchased with intent to hold to maturity. No bond sales to realize gains or losses;
 - d. No corporate bonds of any kind, and certainly no "junk bonds" of any kind; and
 - e. Purchase of most bonds at a premium, in the belief that such bonds offer a greater selection and possibly a better return for the same degree of quality;
2. Pascal was aware that Sedgwick was ignorant of the field of municipal bonds and that Sedgwick relied upon his recommendations because he considered Pascal and GH&C experts in the field;
3. Initially Pascal conducted himself in accord with the above policy. However, in April of 1989, Pascal recommended the sale of Sedgwick's \$100,000.00 Matagorda County, Texas municipal bond, in spite of Sedgwick's reminder of his policy, even though it had not reached maturity. Sedgwick agreed on the sale provided there would be no loss and Paskal guaranteed that no loss would occur. The bond was sold for a loss of \$1,019.00 and after Sedgwick requested an

explanation. Paskal agreed to make up the loss, but never did so:

4. Thereafter, Paskal began recommending "junk bonds" which were inconsistent with Sedgwick's investment criteria. These bonds often had confirmation description which appeared to be municipal bonds, but were instead corporate "junk bonds".

Based upon the above allegations, Sedgwick asserted claims for actionable fraud under both the common law and state and federal securities laws.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. All transactions were authorized and approved by Sedgwick, who retained and exercised ultimate control and decision making responsibility over his account, over the course of the five year relationship;

2. Since 1986, Sedgwick withdrew all bond interest credited to his account, contradicting the alleged investment criteria which changed over time as market conditions and changes in interest rates dictated;

3. Sedgwick was a knowledgeable, experienced investor with a great deal of financial sophistication, who often did not rely solely on Paskal's recommendations and, in fact, lost money because of his rejection of Paskal's advice;

4. All trade confirmations and monthly statements clearly and unambiguously stated the nature of the transaction, pursuant to applicable law, rules and regulations. Paskal made full, complete and accurate disclosures of all material facts relating to the transactions;

5. Sedgwick isolated six bond positions, two of which defaulted, out of approximately fifty "long" positions in the account. Sedgwick failed to mention the bond interest withdrawn from the account and the overall positive return received by Sedgwick.

In addition, Sedgwick asserted several affirmative defenses, including:

1. The Claim fails to state a claim against Respondents for which any damages are recoverable by Sedgwick;

2. Sedgwick failed to mitigate his damages;

3. Sedgwick is barred from bringing this action because of the doctrines of ratification, waiver and estoppel;
4. Sedgwick authorized and consented to the transactions effected on a non-discretionary basis; and
5. Sedgwick is barred from recovery due to his failure to exercise the degree of diligence required in the handling and monitoring of Trust transactions.

RELIEF REQUESTED

Claimant Sedgwick requested entry of an award against Respondents for the sum of \$102,839.00, plus punitive damages, interest, attorneys' fees and the costs of this proceeding.

Respondents requested that the Claim be dismissed in its entirety without any award or recovery.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be execute 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 pleading, 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 Tucker Anthony Incorporated, d/b/a Gabriele, Hueglin & Cashman and Steven B. Paskal were jointly and severally liable for and shall pay to Claimant Glenn W. Sedgwick, Trustee of the Glenn W. Sedgwick Living Trust the sum of \$42,183.00 in actual damages;
2. In addition, Respondents Tucker Anthony Incorporated, d/b/a Gabriele, Hueglin & Cashman and Steven B. Paskal are jointly and severally liable for and shall pay to Claimant Glenn W. Sedgwick, Trustee of the Glenn W. Sedgwick Living Trust, the sum of \$5,000.00 as attorneys' fees. In making this award of attorneys' fees, the panel considered the arguments presented by the parties and determined that authority existed for an award of attorneys' fees to Claimant;

3. The claims for punitive damages are hereby dismissed and denied in their entirety; and
4. All other costs of arbitration shall be borne by the party incurring the cost, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: One (1) prehearing session x \$300.00 per session = \$300.00; Two (2) hearing sessions x \$750.00 per hearing session = \$1,500.00.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and refund the hearing session deposit of \$750.00 previously deposited by the Claimant, Glenn W. Sedgwick, Trustee of the Glenn W. Sedgwick Living Trust. Respondents Tucker Anthony Incorporated, d/b/a Gabriele, Hueglin & Cashman, and Steven B. Paskal are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$1,500.00.

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

Concurring Arbitrators' Signatures

Name

Date

s/ Richard K. Zerr, Esq.
Richard K. Zerr, Esq.
Public Arbitrator
Chairperson

October 5, 1993

s/ William M. Holland
William M. Holland
Public Arbitrator

October 6, 1993

s/ Joan W. Fox
Joan W. Fox
Industry Arbitrator

October 6, 1993

For NASD Use Only

Date of Service on Parties: October 8, 1993