

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Luis Herrero M.D. Chartered
Profit-Sharing Trust

NASD Case Number
92-01992

Name of Respondent(s)

Wakefield Financial Corp.
Alexander Minella
Comprehensive Capital Corp.
G.K. Scott & Co., Inc.
George Kevorkian
John Kevorkian
Mark Czaja
Parsons Eng
Joseph Zaborowski
Keith Friedman
Kenneth Stoops

REPRESENTATION

For Claimant, Luis Herrero, MD, Chartered Profit-Sharing Trust ("Herrero"): Ralph Gonzalez, Esq. of Merkle & Magri, P.A.

For Respondents, Comprehensive Capital Corp. ("Comprehensive"), G.K. Scott & Co., Inc. ("G.K. Scott"), George Kevorkian ("G. Kevorkian"), John Kevorkian ("J. Kevorkian"), and Mark Czaja ("Czaja"): Harold Geringer, Esq. of Geringer & Dolan.

For Respondent, Wakefield Financial Corp. ("Wakefield"): Frank Casillo of Wakefield.

Respondents, Parsons Eng ("Eng"), Joseph Zaborowski ("Zaborowski"), Keith Friedman ("Friedman"), Alexander Minella ("Minella"), and Kenneth Stoops ("Stoops") were pro se.

CASE INFORMATION

Statement of Claim filed: June 15, 1992. Claimant's Submission Agreement signed on: June 23, 1992 by Luis Herrero on behalf of the Trust.

Statement of Answer filed by Respondents, Comprehensive, G. Kevorkian, J. Kevorkian, G.K. Scott, and Czaja on: March 22, 1993. Respondents', Submission Agreements signed on: February 25, 1993 by G. Kevorkian *individually and on behalf of G.K. Scott*, on March 5, 1993 by J. Kevorkian, on February 22, 1993 by Czaja, and on February 26, 1993 by Frederick Cirillo on behalf of Comprehensive.

Respondent, Friedman's Statment of Answer filed on July 16, 1992. Responent Friedman failed to file a *Submission Agreement* as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure ("Code") (See "Other Issues").

Respondents, Minella, Eng, Zaborowski and Stoops failed to file Answers or to sign Submission Agreements as required by Sections 12 and 25 of the Code (See "Other Issues").

HEARING INFORMATION

On October 25, 1993 a Pre-Hearing Conference was held via telephone conference call with an arbitrator.

On November 15, 16, and 17, 1993 in Tampa, Florida hearings lasting six (6) sessions were held.

CASE SUMMARY

Claimant alleged that Respondents were liable for: violation of Section 517.301 of the Florida Investor Protection Act; negligent misrepresentation; breach of fiduciary duty; and, breach of contract. Claimant alleged that Respondents: embarked upon a plan, scheme and course of conduct intended to deceive the investing public regarding the financial condition and future prospects of certain companies; artificially inflated and maintained the market price of such companies' common stock by entering fraudulent price quotations into the Nasdaq Stock Market; and caused Claimant to pruchase said companies' stock at artificially inflated prices.

Respondents, Comprehensive, G.K. Scott, G. Kevorkian, J. Kevorkian, and Czaja denied all allegations of wrongdoing and alleged that: Comprehensive is not a sucesor in interest to G.K. Scott; Czaja never had any dealings with Claimant; Claimant was a knowledgeable investor; Claimant could have sold the stocks for a profit; Herrero was at all times aware of the price of the stock; Claimant did not timely complain of the handling of his account; Stoops

was properly supervised; and the allegations are vague and non-specific.

Comprehensive, G.K. Scott, G. Kevorkian, J. Kevorkian and Czaja asserted affirmative defenses including: lack of privity; good faith; G.K. Scott maintained a compliance department; statute of limitations; laches; and, assumption of risk.

Respondent, Friedman denied all allegations of wrongdoing and alleged that: he had no personal dealings with Claimant; and, the complaint is baseless and without merit.

Respondents, Minella, Wakefield, Eng, Zaborowski and Stoops failed to file Answers (See "Other Issues").

RELIEF REQUESTED

Claimant requested: damages in the amount of \$70,000 plus interest, costs, attorney's fees, and punitive damages.

Respondents, Comprehensive, G.K. Scott, G. Kevorkian, J. Kevorkian and Czaja requested dismissal of the claim plus costs.

Respondent, Friedman requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. The panel finds that Respondent, Eng was required to file and Answer and sign a Submission Agreement pursuant to Sections 12 and 25 of the Code, Eng being a person associated with an NASD member firm at the time the facts giving rise to the controversy occurred. The panel finds that jurisdiction exists pursuant to Section 12 of the Code and pursuant to the Form U-4 executed by Respondent Eng.

2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this panel finds service upon and adequate notice to Respondent Eng. The NASD has made every attempt to locate and serve Eng with Notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

3. The panel finds that there was not due notice to Respondents, Wakefield, Minella, Zaborowski, and Stoops and, therefore, dismisses them, without prejudice.

4. The Claimant voluntarily dismissed Respondents, Friedman and Czaja, with prejudice.

5. The Claimant and Respondents, Comprehensive, G.K. Scott, G. Kevorkian, J. Kevorkian, and Czaja 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 post hearing submissions, and Respondent Eng neither appearing at the hearing nor requesting an adjournment thereof, notwithstanding his knowledge of this proceeding as evidenced in the record of proceedings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Comprehensive is found not liable and therefore the claim against it is hereby dismissed.
2. Respondents, G.K. Scott, G. Kevorkian, J. Kevorkian, and Eng are found liable, jointly and severally, and shall pay to Claimant the amount of \$115,637.68, inclusive of interest.
3. Claimant's request for costs, attorney's fees, and punitive damages is denied.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$3300 (six sessions x \$500 per session plus one prehearing conference x \$300).

Respondents, G.K. Scott, G. Kevorkian, J. Kevorkian, and Eng are hereby assessed \$3300, jointly and severally, \$800 of which shall be paid directly to the Claimant as a refund of the \$500 hearing session deposit and the \$300 overpayment previously deposited by Claimant. The balance of \$2500 shall be paid to the NASD.

NASD Case Number 92-01992

Award

Page - 5 -

Respondents. G.K. Scott, G. Kevorkian, J. Kevorkian, and Eng shall, jointly and severally, reimburse Claimant for the \$150 filing fee.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
David A. Townsend, Esq.

Public

/s/
John Geraci

Public

/s/
Joseph Amonette

Industry

Date of Decision: 1-7-94