

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John and Linda Vavrek

92-02521

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Paul W. Ziegler

REPRESENTATION

For Claimants John and Linda Vavrek ("Claimants"): Anthony J. Hartman, Esq. of Hermann Cahn et al.

For Respondents Merrill Lynch Pierce Fenner & Smith Inc. ("MLPFS") and Paul W. Ziegler ("Ziegler"): Thomas L. Taylor, III, Esq. of Cooper, Epstein et al.

CASE INFORMATION

Statement of Claim filed: July 31, 1992.

Claimants' Submission Agreement signed on: July 16, 1992.

Joint Statement of Answer filed by Respondents on: October 6, 1992.

Respondent MLPFS's Submission Agreement signed on: October 2, 1992.

As required, pursuant to Section 25 of the Code of Arbitration Procedure. ("Code") Respondent Ziegler did not file a notarized Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: May 5, 1993/1 session/1 arbitrator.

Hearing Dates/Sessions: May 12, 1993/2 sessions/3 arbitrators.

May 17, 1993/3 sessions/3 arbitrators.

Hearing Location: NASD, Cleveland. OH.

CASE SUMMARY

Claimants alleged they were unsophisticated investors who felt they could benefit from the advice of their friend, Ziegler. Claimants alleged that in August 1987, Ziegler recommended a new issue about to go public, whose issuer was Goldome Federal Savings Bank ("Goldome"). Claimants alleged they knew nothing about Goldome, but Ziegler told John Vavrek ("Vavrek") that if the bank went under, Claimants would get book value of their shares. Claimants alleged they instructed Ziegler to purchase shares of Goldome on three (3) occasions; however, the October 1987 market crash caused their investment to lose value.

Claimants further alleged Vavrek and Ziegler discussed diversifying or buying more shares of Goldome at a lower price to "average down" and maximize gains if the shares went up. Claimants alleged Ziegler repeated that as long as their average cost per share was below book value, they stood to make money. Claimants alleged they purchased more shares in October 1987 but told Ziegler they had begun to use funds borrowed on lines of credit. Claimants alleged they bought more shares of Goldome in November 1988 on Ziegler's advice, alleging that Ziegler told them that since book value had dropped they should buy more shares to ensure their holdings continued to average below book value. Claimants alleged in November 1989 Goldome shares moved upward and Ziegler told them his MLPFS source said the price was going to rise, so they borrowed monies and bought more shares. Claimants alleged the price of Goldome fell in 1990 and they bought more shares in January 1991 at which time Ziegler told them he did not recommend they purchase further shares because they could lose everything. Claimants alleged they purchased more shares, using borrowed monies, because they felt it was necessary to get their average share price down in the hope the price would go up enough for them to get out.

Further, Claimants alleged they called Ziegler in January or February 1991, when the stock had risen, asking him to sell but was told he was on vacation. Claimants alleged another broker said he could not sell all shares at once as this would "bust the market" and a supervisor told them MLPFS would sell the shares in increments. Claimants alleged they were not previously advised of this and when they decided to sell their shares in increments, the price had fallen.

Also, Claimants alleged the stock went up again several days to a week later, but when Vavrek instructed Ziegler to sell the shares, Ziegler talked him out of it; the price of Goldome did not rise again and the shares were delisted by the New York Stock Exchange when Goldome failed.

Finally, Claimants alleged Respondents breached the fiduciary duty owed to Claimants; committed fraud upon Claimants; and breached their contracts with Claimants.

Respondents denied the allegations of breach of fiduciary duty; fraud; and breach of contract.

Respondents alleged Vavrek called Ziegler inquiring about Goldome and Ziegler provided Claimants with a copy of the "red herring" prospectus regarding Goldome but did not solicit the purchase of shares on the offering or at any time thereafter. Respondents further maintained Ziegler verbally advised Claimants this was a high risk security and that Ziegler referred them to the representations concerning pro forma data in the prospectus. In addition, Respondents asserted Ziegler advised Vavrek that the representation of book value was likely a ceiling on the issue's potential for appreciation and as its book value declined, Ziegler advised Vavrek of the negative ramifications of such decline. Respondents asserted Claimants' initial purchase on August 19, 1987 was made in the after market and was unsolicited as noted on the confirmation, as were the other two (2) purchases.

Respondents alleged Claimants initiated the conversion of their cash account into a margin account in October 1987 and signed a margin agreement. Further, Respondents maintained Claimants purchased additional shares of Goldome in October 1987 on an unsolicited basis; that shortly after this transaction Ziegler reiterated the high risk nature of the investment; that Ziegler informed Claimants that the book value had been recalculated down; and that Ziegler did not recommend they use borrowed funds to purchase the stock. Respondents maintained that Claimants purchased more shares in November 1988, notwithstanding Ziegler's discussions with them about the continued decline in Goldome's book value. Respondents asserted that in November 1989 Claimants purchased shares of two other stocks at Ziegler's recommendation to diversify their portfolio, and also purchased more shares of Goldome on an unsolicited basis. Respondents alleged Claimants purchased further shares of Goldome in January 1991, on an unsolicited basis, despite Ziegler's recommendation to diversify.

Respondents alleged that in early 1991 Goldome's price did rise, but Claimants asserted they did not wish to sell at the bid price but rather, at the ask price. Also, Respondents maintained Ziegler discussed with Vavrek the problems posed by trying to sell a large block of stock all at once at the market. Respondents alleged Ziegler advised Claimants to sell their holdings in Goldome as the price declined and warned them of the consequences of a government takeover of Goldome, but that they rejected his advice.

Finally, Respondents alleged Claimants received monies in a class action suit concerning Goldome and executed a release of all claims in this matter.

RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of \$97,995.00; interest for all wrongfully induced purchases of Goldome from August 19, 1987 to date of judgment; costs; fees; and punitive damages in the amount of \$100,000.00.

Respondents requested: the claim be denied in all respects; costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

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:

The arbitration panel made the following ruling with respect to Respondent Ziegler:

Pursuant to the bylaws of the NASD, the arbitrators determined that Respondent Ziegler was required to submit to this arbitration and, therefore, was bound by this panel's rulings and determinations.

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 Merrill Lynch Pierce Fenner & Smith Inc. and Paul W. Ziegler are hereby liable, jointly and severally, and shall pay to Claimants the sum of \$40,069.83;
2. Claimants claim of punitive damages is denied;
3. All other claims are denied;
4. Each party shall bear its own expenses.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed.

1 pre-hearing conference session with one (1) arbitrator X \$300.00 = \$300.00 net due.

5 sessions X \$750.00 = \$3,750.00 minus Claimants' hearing session deposit of \$750.00 which shall be retained by the NASD = net \$3,000.00 due.

Forum fees Assessed Against:

1. Claimants John and Linda Vavrek are hereby liable, jointly and severally, and shall pay to the NASD the sum of \$600.00;
2. Respondents Merrill Lynch Pierce Fenner and Smith Inc. and Paul W. Ziegler are hereby

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liable, jointly and severally, and shall pay to the NASD the sum of \$2,700.00.

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

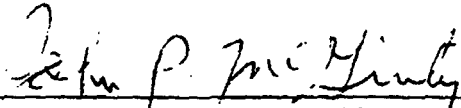

Lewis R. Katz/Public Arbitrator

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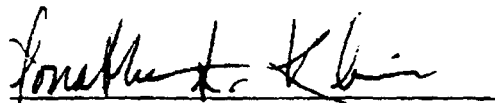
John P. McGinty/Industry Arbitrator

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A handwritten signature in cursive script, appearing to read "Jonathan I. Klein", is written over a horizontal line.

Jonathan I. Klein/Public Arbitrator

Date of Decision: June 14, 1993