

N.A.S.D. AWARD

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Craig T. and Linda K. Fischer

92-03491

Name of Respondents

J.W. Gant & Associates, Inc.
Stephen H. Chu
Pacific Southern Securities, Inc.
Eric J. Russell
Joanne (Jody) E. Swanson
James Patrick Driver

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 14, 1992, Claimants Craig T. and Linda K. Fischer by and through their counsel John D. Falgiani, Jr., Esq. of UAW-GM Legal Services Plan, Austintown, OH maintained that on or about October, 1990 they received several unsolicited telephone calls at their residence from Respondent Stephen H. Chu, Account Executive at Respondent J.W. Gant & Associates, Inc. who was apparently engaging in the practice of "canvass" calling in search of new investors, at which time, Respondent Stephen H. Chu induced Claimants to sign a New Account Information Form whereby the form indicated the investment objectives as "growth with risk". Claimants further alleged that over a span of 8 months, Respondent Stephen H. Chu recommended 6 stocks all of which declined in value significantly whereby Claimants invested \$13,525.00 and sustained losses totalling \$11,000.00. Claimants contended that in the summer of 1991 Respondent Stephen H. Chu recommended that they transfer their account from Respondent J.W. Gant & Associates, Inc. to Respondent Pacific Southern Securities, Inc. and that they purchase shares in Vector Automotive ("VCAR"). Claimants further contended that Respondent Stephen H. Chu advised them that VCAR was not available, and he recommended Champion Sports, which they purchased. Claimants asserted that during the time between Claimants' conversation with Respondent Stephen H. Chu and the actual transaction on August 23, 1991, the securities; Celebrity Resorts, Inc. and Medical Innovations, Inc.; then being held in Claimants' account, declined in value. Claimants further alleged that Respondent Stephen H. Chu should have

disclosed this loss prior to effectuating the transaction on August 23, 1991. Claimants argued that a dispute arose between them and Respondent Stephen H. Chu that a deposit of \$1,200.00 was to be held in a cash account until further instruction whereby Respondent used the funds to purchase stocks. Claimants further alleged that when they asked for the \$1,200.00 Respondent Stephen H. Chu sold 35,000 shares of Champion stock at a loss in order to partially liquidate the account. Claimants argued that Respondent Stephen H. Chu's inappropriate handling of their account and Respondents J.W. Gant & Associates, Inc. and Pacific Southern Securities, Inc.'s failure to supervise, caused them to sustain losses.

Claimants Craig T. and Linda K. Fischer filed an Amended Statement of Claim whereby they named Respondents Eric J. Russell, President; Joanne (Jody) E. Swanson, Vice President; and James Patrick Driver, Secretary of Respondent J.W. Gant & Associates, Inc. as responsible parties for their losses.

Respondent Stephen H. Chu who appeared Pro Se, maintained that when he began working with Claimants Craig T. and Linda K. Fischer in August, 1990, he was affiliated with Respondent J.W. Gant & Associates, Inc. whereby an account application form was completed that indicated that Claimants' approximate annual household income was between \$50,000.00 and \$60,000.00, and with a total net worth of approximately \$150,000 in addition to a liquid net worth of \$50,000.00. Respondent Stephen H. Chu further maintained that Craig T. Fischer assured him he had investment experience and reported that he had traded in previous metals and other commodities. Respondent Stephen H. Chu contended that this experience, the information provided by the Claimants regarding income and assets plus Claimant Craig T. Fischer's determination to make independent investment decisions was the basis for their relationship. Respondent Stephen H. Chu further contended that in August, 1990 he purchased 100 shares of Arrow Electronic Inc. Preferred stock on behalf of Claimants and later recommended the purchase of 2,000 shares of Bali Jewelry, Inc., at which time, the Claimants instead chose to purchase 10,000 shares and subsequently both stocks were sold at profit of approximately 10%. Respondent Stephen H. Chu asserted that Claimants then chose to purchase 4,000 shares of Celebrity Resorts, Inc. and 2,800 shares of Medical Innovations, Inc. over the next few months. Respondent Stephen H. Chu further asserted that Claimants sought his advice regarding their position in the commodities market, whereby he recommended that they close out their position, to avoid margin calls that would deplete their liquid resources. Respondent Stephen H. Chu argued that in July, 1991 he voluntarily chose to leave Respondent J.W. Gant & Associates, Inc., at which time, Claimants agreed to have their account transferred with him to Respondent Pacific Southern Securities thus, Claimants engaged in only four transactions through him while affiliated with Respondent J.W. Gant & Associates, Inc. Respondent Stephen H. Chu further argued that Claimants continued to seek short-term gains but he encouraged them to take longer term approach, to allow for price appreciation. Respondent Stephen H. Chu further alleged that in late August, 1991 he recommended the purchase of Champion Sports, Inc. based on Claimants instructions to research possible investments which would help them realize their goal

of a quick profit. Respondent further contended that he worked with Claimants in analyzing their trades to be sure that these were suitable transactions given their financial status, resources, investment experience and investment goals.

Respondent Pacific Southern Securities by and through its President, Gerald M. Schechter maintained that they have set written procedure governing churning, suitability, and communications between brokers and customers, that if followed by brokers would reasonably be expected to prevent any problem as alleged in this arbitration from occurring. Respondent Pacific Southern Securities, Inc. further maintained that without being contacted directly by Claimants Craig T. and Linda L. Fischer there was no reasonable method for them to know that a problem existed and other than this action they have received no customer complaints' or complaint improprieties by Respondent Stephen H. Chu. Respondent Pacific Southern Securities, Inc. contended that Champion Sports was an actively traded NASDAQ stock, and that based on representations by the issuer, there existed a reasonable basis for Stephen H. Chu's recommendation for the purchase of this security. Respondent Pacific Southern Securities further contended that prior to any purchase transactions, Claimants had received, and signed copies of a suitability statement, and suitability questionnaire which deal with the risks associated with lower price securities. Respondent asserted that the drop in value of the Champion Sports is not an event that is controlled in any way by them; it is part of normal fluctuations in the stock market, thus the claim should be dismissed.

Respondent Joanne (Jody) E. Swanson who appeared Pro Se maintained that although Respondent J.W. Gant & Associates, Inc. and their wholly owned subsidiary, J.W. Grant Financial, are no longer in operation, to the best of her knowledge, bankruptcy has not yet been filed. Respondent Joanne (Jody) E. Swanson further maintained that it appears that the Claimants Craig T. and Linda K. Fischer have misunderstood her position with Respondent J.W. Gant & Associates, Inc. and, for the record, she would like it noted that she was not, nor has she ever been, an officer of the firm, nor did she have an ownership role. Respondent Joanne (Jody) E. Swanson contended that the Claimants relied on Respondent Stephen H. Chu and others, whom she had no control over, in making their investment decisions and at no time was she directly responsible for the actions or recommendations of Respondent Stephen H. Chu who was an Account Executive in the Washington, D.C. branch office. Respondent Joanne (Jody) E. Swanson further contended that the injuries allegedly sustained by the Claimants were not caused by any act or omission on her part, and she is not responsible for the losses incurred.

Respondent James Patrick Driver by and through his counsel A. Thomas Tenebaum, P.C., Denver, Co. moves to dismiss all claims filed by Claimants Craig T. and Linda K. Fischer whereby he maintained that the Statement of Claim, as amended, fails to state any claim of wrongdoing by him. Respondent J. Patrick Driver further maintained that he did not service the account of the Claimants nor did he every have any written or oral communications with the

Claimants concerning the securities purchased by Claimants or any other matters. Respondent James Patrick Driver contended that Claimants relied on Respondent Stephen H. Chu, over whom he had no control in making their investment decisions. Respondent James Patrick Driver further contended that any injuries allegedly sustained by Claimants were not proximately caused by any act or omission by him and he is simply not responsible for any losses incurred, thus he should be dismissed.

Respondent J.W. Gant & Associates, Inc. failed to file an Answer to the Statement.

Respondent Eric J. Russell failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Craig T. and Linda K. Fischer requested \$10,000.00 in actual damages

Respondent Stephen H. Chu requested the claim be denied.

Respondent Pacific Southern Securities, Inc. requested the claim be dismissed with prejudice.

Respondent J.W. Gant & Associates, Inc. failed to file an Answer to the Statement of Claim.

Respondent Eric J. Russell failed to file an Answer to the Statement of Claim.

Respondent Joanne (Jody) E. Swanson requested the claim be dismissed.

Respondent James Patrick Driver requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph W. Grossner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 10, 1992; by the Respondent Stephen H. Chu on December 4, 1992; by the Respondent Pacific Southern Securities, Inc. on February 10, 1993; by the Respondent Joanne (Jody) E. Swanson on April 13, 1993 and not by the Respondents J.W. Gant & Associates, Inc., James Patrick Driver and Eric J. Russell as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent J.W. Gant & Associates, Inc., was served by regular mail on November 18, 1992 and given an opportunity to respond, which they failed to do so.
2. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent Eric J. Russell was notified on March 24, 1993, via certified mail, of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. The signed certified mail receipt was returned to the NASD dated March 27, 1993, evidencing his receipt of this correspondence.
3. Respondent Eric J. Russell failed to file an Answer to the Statement of Claim.
4. Respondent J.W. Gant & Associates, Inc. failed to file an Answer to the Statement of Claim.
5. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondents J.W. Gant & Associates, Inc. and Eric J. Russell were required to submit to this arbitration proceeding and are, therefore, bound by the arbitrator's ruling and determination.

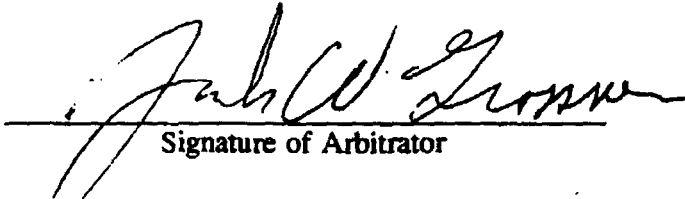
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent James Patrick Driver's Motion to Dismiss is denied.
2. Respondents J.W. Gant & Associates, Inc.; Stephen H. Chu; Pacific Southern Securities, Inc.; Eric J. Russell; Joanne (Jody) E. Swanson and James Patrick Driver are jointly and severally liable and shall pay to the Claimants Craig T. and Linda K. Fischer the sum of \$7,500.00 in damages.
3. Respondents J.W. Gant & Associates, Inc.; Stephen H. Chu; Pacific Southern Securities, Inc.; Eric J. Russell; Joanne (Jody) E. Swanson and James Patrick Driver are jointly and severally liable and shall pay to the Claimants Craig T. and Linda K. Fischer simple interest at the rate of 6% per annum from January 1, 1992 to the date of payment of the award.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities

Dealers, Inc. by the Claimants Craig T. and Linda K. Fischer shall be retained by the NASD. Respondents J.W. Gant & Associates, Inc.; Stephen H. Chu; Pacific Southern Securities, Inc.; Eric J. Russell; Joanne (Jody) E. Swanson and James Patrick Driver are jointly and severally liable and shall pay to the Claimants the sum of \$150.00, as reimbursement.

AFFIRMATION

I, Joseph W. Grossner, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

Date of Decision: June 1, 1993