

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

R.A. Gillis & Fabiola R. Gillis

92-03843

Name of Respondents

Dominick & Dominick Incorporated;
Andrew Scudiero;
Robert H. Griffith;
Nick Ferrara.

REPRESENTATION

Claimants R.A. Gillis and Fabiola R. Gillis appeared pro se.

Respondent Dominick & Dominick Incorporated was represented by Suzanne M. Saur, Esq. and John A. Saur, Esq. of Saur and Saur on Houston, Texas.

Respondent Andrew Scudiero was represented by John E. Lawlor, Esq. of Garden City, New York, New York.

Respondents Robert H. Griffith and Nick Ferrara did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on November 12, 1992.

The Claimants' Submission Agreement was signed on November 6, 1992 by R.A. Gillis and Fabiola R. Gillis.

Respondent's Dominick & Dominick Incorporated Statement of Answer was filed on January

7, 1993. An Amended Statement of Answer was filed on May 12, 1993.

The Respondent Dominick & Dominick Incorporated's Submission Agreement was signed on December 7, 1992 by Robert C. Harrison, Secretary of Dominick & Dominick Incorporated.

Respondents Andrew Scudiero, Robert H. Griffith and Nick Ferrara did not file Statements of Answer and did not execute Submission Agreements.

HEARING INFORMATION

Pre-Hearing Conference:	None held.
Hearing Date/Sessions:	July 13, 1993 for two (2) sessions.
Hearing Location:	Houston, Texas.

CASE SUMMARY

Claimant R.A. Gillis and Fabiola R. Gillis, Joint Tenants, ("Gillis") alleged that they opened an account on June 1990 with the firm Prescott Steinam and purchased 500 shares of Owens Corning Fiberglass ("Owens"), 1000 shares of Calfed, Inc. ("Calfed") and 1000 shares of DNA Plant Technology ("DNA"). The Claimants asserted that they received an undated letter in December, 1990 from V.P. Securities, Inc. informing them that their account and other Prescott Steinam accounts had been acquired by V.P. Securities, a full service broker dealer using the clearing services of Dominick & Dominick Incorporated ("Dominick & Dominick") and requesting the claimants to complete, sign and return a new account form, a W-9 and a cash account agreement. As alleged, the Claimants did not return the forms when Andrew Scudiero ("Scudiero") of V.P. Securities contacted him on December 20, 1990 and recommended selling the stock in the account and purchasing some Golf stock. Mr. Gillis asserted that he informed Scudiero that he did not have permission to buy or sell securities and asked that Scudiero close the account and forward the securities to the claimants. During another conversation on January 21, 1991, Mr. Gillis again requested closure of the account and the return of the securities after Scudiero informed him that 1000 shares of Chemical Banking Corporation had been purchased in the account in error. The claimants alleged that the failure of Scudiero to mention that the Calfed and Owens stock in the account was sold and a purchase of 14,000 shares of Direct Pharmaceutical was made was fraud or negligence. After receipt of the confirmation of the above transactions, Mr. Gillis contacted V.P. Securities and spoke with Robert Griffith ("Griffith") who said he would investigate the matter and notify the claimant. After several days without receipt of a return call from Griffith, Mr. Gillis called again and spoke with Nick

Ferrara ("Ferrara") of V.P. Securities who told him the account would be corrected. However, the transactions made in error were not corrected. The claimants later recovered possession of the 14,000 shares of Direct Pharmaceutical and 1000 shares of DNA.

Respondent Dominick & Dominick denied all the allegations in the Statement of Claim and requested that the claim be dismissed in its entirety. In the Amended Statement of Answer, Dominick & Dominick alleged that the Claimants failed to state any specific wrongdoing by them in the claim. Dominick & Dominick claimed that they were the clearing firm for V.P. Securities, provided back-office services only such as record-keeping and custodial services, they were not liable for the management of the account in its capacity as clearing agent and that V.P. Securities handled all trades, placed orders and supervised the account. Dominick & Dominick asserted the following affirmative defenses, including, but, not limited to, indemnification, doctrine of respondeat superior, waiver, estoppel, ratification and doctrine of laches.

RELIEF REQUESTED

The Claimants requested an entry of an award against the Respondents Dominick & Dominick Incorporated, Andrew Scudiero, Robert H. Griffith and Nick Ferrara in the total amount of \$104,690.00 including \$19,875.00 for the 500 shares of Owens Corning stock, \$5,500.00 for the 1000 shares of Calfed stock, \$60.00 in dividends, \$500.00 in expenses, \$950.00 for costs of arbitration and punitive damages in the amount of \$77,805.00.

The Respondent, Dominick and Dominick requested an entry of an award against the Claimants for attorneys' fees, expenses and costs.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing on July 13, 1993, the Claimants and Respondent Andrew Scudiero signed a settlement agreement. The settlement agreement provided that the Claimants agreed to dismiss all claims against Respondent Andrew Scudiero with prejudice if he paid to the Claimants a sum of \$13,280.00 on or before July 16, 1993 and if payment was not made, the arbitration panel would be authorized to enter an award in favor of the Claimants against Scudiero in the amount of \$20,000.00.

Respondent Robert H. Griffith did not file an executed Submission Agreement. Griffith, as an associated person with a member firm at the time this dispute arose, is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure. In addition, the Panel found that Griffith had been properly served with the Statement of Claim and Notice of

the Hearing required by the NASD Code of Arbitration Procedure. Pursuant to the Section 29 of the Code, the Panel determined that the hearing would proceed.

After reviewing the file, the panel determined that the NASD had been unable to serve the Statement of Claim and Notification of the Arbitrators on the Respondent, Nick Ferrara which is required pursuant to Sections 21 and 25 of the Code of Arbitration Procedure. Therefore, the claims asserted against Respondent Nick Ferrara are hereby dismissed without prejudice.

On May 12, 1993, Dominick & Dominick filed a Motion to Dismiss. Upon review of the motion and all responses, the panel denied the motion on July 13, 1993.

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 claims of the Claimants, R.A. Gillis and Fabiola R. Gillis against Respondents Dominick & Dominick Incorporated and Robert H. Griffith are dismissed with prejudice and denied in their entirety;
2. The claims against Respondent Nick Ferrara are hereby dismissed without prejudice;
3. The claim for punitive damages is hereby dismissed and denied in its entirety; and
4. The parties shall bear their respective costs, including attorneys' fees, except those specifically enumerated herein.

FORUM FEES

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

Forum fees are assessed against the Claimants, R.A. Gillis and Fabiola R. Gillis. The NASD shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously filed by the Claimants. The Claimants are assessed and shall pay to the NASD additional Forum Fees

in the amount of \$750.00.

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

Concurring Arbitrators' Signatures

Name	Date of Signature
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<u>Donald H. Fidler, Esq.</u> Donald H. Fidler, Esq. Public Arbitrator Chairperson	
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	<u>October 4, 1993</u>
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<u>Stephen W. Patin</u> Stephen W. Patin Public Arbitrator	
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	<u>October 5, 1993</u>
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<u>Gil A. Baumgarten</u> Gil A. Baumgarten Industry Arbitrator	
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	<u>October 4, 1993</u>
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For NASD Use Only

Date of Service of Award: 10-11-93