

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

J.M.G. Boreas

92-04035

Name of Respondent

F.N. Wolf & Co., Inc.

REPRESENTATION

For Claimant: J.M.G. Boreas appeared pro se.

For Respondent: F.N. Wolf & Co., Inc. was represented by Robert B. Bieck, Jr., Esq., of Jones, Walker, Waechter, Poitevant, Carrere & Denegre, located in New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed: December 1, 1992.

Claimant's Submission Agreement signed on: November 20, 1992.

Statement of Answer filed by Respondent F.N. Wolf & Co., Inc. on: January 27, 1993.

Respondent F.N. Wolf & Co., Inc.'s Submission Agreement signed on: January 6, 1993 by Richard T. Sullivan, Vice President and Compliance Director, F.N. Wolf & Co., Inc.

HEARING INFORMATION

Pre-Hearing Conference: June 17, 1993 for One (1) session before One (1) Arbitrator.

Hearing Date/Session: June 22, 1993 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant J.M.G. Boreas ("Boreas") alleged that Respondent F.N. Wolf & Co., Inc. ("F.N. Wolf") induced him to purchase stock in Nacoma Consolidated Industries, Inc. ("Nacoma") by misrepresenting or omitting several material facts regarding the company. Boreas specifically alleged that:

1. In May of 1991, he was contacted by an F.N. Wolf broker regarding the purchase of shares in Nacoma. Boreas was told that sales for 1989 were \$8,300,000; sales had jumped to \$9,800,000 for 1990; sales were expected to accelerate tremendously in 1991 because the company already had a backlog in orders of \$15,000,000; and the share price would increase when Nacoma became listed on the NASDAQ Exchange in several weeks because the company would become better known to the general investment public. Based upon these representations, Boreas purchased 2000 shares for \$6,756.50;
2. On December 20, 1991, Nacoma declared a 2 for 1 reverse split and still was not listed on the NASDAQ Exchange. In November of 1992, Nacoma declared a 20 to 1 reverse split, resulting in a reduction in the original 2000 shares purchased to 50 shares. Boreas sold his shares for \$230.00;
3. The \$15,000,000 in back log orders obviously never existed and it is impossible for the value of a healthy company to drop 96.6% in 1-1/2 years. In addition, Nacoma never became listed on the NASDAQ Exchange and the price per share paid was totally out of proportion with the real value of the company.

Respondent F.N. Wolf denied the material allegations of the Statement of Claim, alleging that:

1. Boreas was a sophisticated investor with substantial net worth whose investment objective was long-term growth;
2. Nacoma's sales figures for 1989 and 1990 were supported by Nacoma's financial statements;
3. At the time of Boreas' investment and through August of 1991, Nacoma was actively engaged in attempting to secure listing on the NASDAQ Exchange. However, Boreas was aware that Nacoma was not yet listed on the Exchange and therefore cannot claim that Nacoma's failure to be listed was a material fact in his decision;
4. Boreas' losses in the Nacoma investment were a result of independent market forces and not because the issue was not listed and therefore, the alleged

misrepresentation was not a proximate cause of the loss: and

5. Boreas purchased three other profitable issues through F.N. Wolf which he fails to complain of.

In addition, F.N. Wolf asserted several affirmative defenses, including the following:

1. Claimant's Statement of Claim fails to state a claim upon which relief may be granted;
2. The claim is barred by the equitable principles of waiver, estoppel and ratification;
3. Boreas assumed the risk of any losses or diminution in the value of the account;
4. The diminution in value, in whole or in part, is the result of unforeseen market fluctuations;
5. The purported wrongdoing of F.N. Wolf was not the proximate cause of the losses for which Boreas sought recovery;
6. The Statement of Claim failed to plead fraud with particularity and failed to set forth the elements for an action for fraudulent misrepresentation or concealment;
7. Boreas' comparative fault, lack of diligence and failure to conduct his own financial affairs reasonably bars any recovery; and
8. Any determination of losses because of the Nacoma investment should be offset by the profits made in the other F.N. Wolf investments.

RELIEF REQUESTED

Claimant Boreas requested that the Arbitrator enter an award for the loss of \$6,526.50 incurred in the investment in Nacoma.

Respondent F.N. Wolf requested that Claimant's Statement of Claim be dismissed with prejudice and F.N. Wolf be awarded all costs and attorneys' fees associated with the proceedings.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleading, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent F.N. Wolf & Co., Inc. is liable for and shall pay to Claimant J.M.G. Boreas the sum of \$6,526.50;
2. The parties shall pay there own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing Session x \$200.00 per session = \$200.00; One (1) hearing session x \$200.00 per session = \$200.00; Total Forum Fees = \$400.00.

The National Association of Securities Dealers, Inc. shall retain the \$75.00 claim filing fee and refund the \$200.00 hearing session deposit previously deposited by the Claimant, J.M.G. Boreas. Respondent F.N. Wolf & Co., Inc. is liable for and shall pay to the NASD forum fees in the sum of \$400.00.

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

Arbitrator's Signature

Name

Date

Gordon W. Hall, Esq.
Gordon W. Hall, Esq.

June 29, 1993

Date of Service of Award: 7-7-93