

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Carolyn B. Gilbert

93-00736

Name of Respondents

Craig-Hallum, Inc., Hayne, Miller & Farni, Inc., f/k/a
L'Argent Securities, Inc., and William David Milkes

REPRESENTATION OF PARTIES

For Claimant at the hearing: Rebecca E. Bender, Esq. of Rebecca E. Bender & Associates, P.A., Minneapolis, Minnesota.

For Respondent, Craig-Hallum, Inc., at the hearing: Vincent Louwagie, Esq. of Fruth and Anthony, Minneapolis, Minnesota. For Respondents Hayne, Miller & Farni, Inc. at the hearing and William David Milkes: Terrence J. Fleming, Esq. of Lindquist & Vennum, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on: February 26, 1993. Amended Statement of Claim filed on or about: June 25, 1993. Claimants' Submission Agreement signed: February 22, 1993

Statement of Answer filed by Respondent Craig-Hallum on: May 12, 1993. Statement of Answer filed by Respondents Hayne Miller & Farni, Inc. and William Milkes on: April 29, 1993.

Respondent Craig Hallum's Submission Agreement signed on: May 7, 1993. Respondent Hayne Miller's Submission Agreement signed on: April 28, 1993. Respondent William Milkes' Submission Agreement signed on: April 28, 1993.

HEARING INFORMATION

Hearing dates: April 20, 1994 for two (2) sessions.
April 21, 1994 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant, Carolyn Gilbert ("Gilbert") alleged that Respondent William David Milkes ("Milkes") purchased unsuitable investments such as penny stocks, initial public offerings, and other highly speculative securities, engaged in excessive trading of her account, and misrepresented to her that he would get her a return of \$500 per month.

Respondent Craig-Hallum, Inc. ("Craig-Hallum") stated in their Answer that each trade was authorized and approved by Gilbert prior to it being effected, and that she received confirmation notices reflecting the account activity. Craig-Hallum also alleged that her investment objectives included speculation and growth.

Respondents Hayne, Miller and Farni, Inc. ("Hayne Miller") and William Milkes stated in their joint answer that Gilbert was aware of the risks of purchasing speculative investments and that each transaction was authorized.

Claimant Gilbert, in her Amended Statement of Claim removed Milkes as a named Respondent as a result of his filing for bankruptcy protection. Gilbert alleged that Respondents engaged in the following violations: 1. Breach of Contract and Know Your Customer Rule; 2. Violation of Minnesota State Section 325F.68; 3. Common Law Fraud; 4. Negligent misrepresentation; 5. Breach of Fiduciary Duty against former Respondent Milkes; and 6. Liability Against Respondents under Respondeat Superior.

RELIEF REQUESTED

Claimant requested approximately \$60,000.00 in lost principal and lost income as follows: Milkes and Craig-Hallum jointly and severally in the amount of \$7,697.04, Milkes individually in the amount of \$13,982.35, and Milkes and Hayne, Miller jointly and severally in the amount of \$35,139.27 plus attorney's fees and costs and punitive damages if appropriate. Gilbert, in her Amended Statement of Claim, requested approximately \$45,000 for losses in her accounts, market-adjusted damages, twice the amount Claimant paid respondents as commissions, punitive damages, attorney's fees, pre-judgment interest, post-judgment interest, costs, filing and hearing session fees, and other disbursements.

Respondent Craig-Hallum requested that the Statement of Claim be dismissed, and that they be awarded their attorney's fees and costs. Respondents Hayne Miller and Milkes requested that the Statement of Claim be dismissed, and that they be awarded their attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated June 2, 1993, counsel for Claimant voluntarily dismissed, without prejudice, her claim against Summit Investment. Therefore, Summit Investment is not a party in the arbitration.

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Gilbert against Craig-Hallum

1. Respondent Craig-Hallum shall be and hereby is liable for, and shall pay to the Claimant, Carolyn Gilbert, the amount of Nine Thousand, Nine Dollars and Thirty Four Cents (\$9009.34) which represents 80% of her losses on comparative negligence;

2. Respondent Craig-Hallum shall be and hereby is liable for, and shall pay to the Claimant, Carolyn Gilbert, interest at six percent (6%) for four (4) years;

3. Respondent Craig-Hallum shall be and hereby is liable for, and shall pay to the Claimant, Carolyn Gilbert, costs in the amount of Five Hundred Eighty Eight Dollars and Fifty Six Cents (\$588.56);

Gilbert against Hayne, Miller & Farni, Inc.

4. Respondent Hayne, Miller & Farni, Inc. shall be and hereby is liable for, and shall pay to the Claimant, Carolyn Gilbert, the amount of Eighteen Thousand, One Hundred Eighteen Dollars (\$18,118.00) which represents 80% of her losses on comparative negligence;

5. Respondent Hayne, Miller & Farni, Inc. shall be and hereby is liable for, and shall pay to the Claimant, Carolyn Gilbert, interest at six percent (6%) for four (4) years;

6. Respondent Hayne, Miller & Farni, Inc. shall be and hereby is liable for, and shall pay to the Claimant, Carolyn Gilbert, costs in the amount of Five Hundred Eighty Eight Dollars and Fifty Seven Cents (\$588.57)

7. The request for punitive damages is denied;

8. Each of the parties shall bear their own costs for

attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing sessions x \$500 = \$2000.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150, and shall retain the hearing session deposit in the amount of \$500 previously paid to the NASD by Claimant. **Total Amount Due: \$1500, To Be Paid As Follows:**

1. Respondent, Craig-Hallum, Inc. shall pay to the NASD half the additional forum fees in the amount of \$750;

2. Respondent, Hayne, Miller & Farni, Inc., shall pay to the NASD half the additional forum fees in the amount of \$750;

3. Respondents, Craig-Hallum, Inc. and Hayne, Miller & Farni, Inc., jointly and severally, shall reimburse to the Claimant, Carolyn Gilbert, the amount of \$500 which represents the hearing session deposit she previously deposited with the NASD.

The additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

5-23-94

s/s Douglas D. McFarland, Esq.
Douglas D. McFarland, Esq.
Presiding, Public Arbitrator

6-8-94

s/s Harold G.S. King
Harold G. S. King
Public Arbitrator

5-24-94

s/s Richard D. Estenson
Richard D. Estenson
Industry Arbitrator

Date Award Served By The NASD: 6-14-94

N.A.S.D. Disciplinary Referral
National Association of Securities Dealers

Name of Claimant

Carolyn Gilbert

93-00736

Name of Respondents

Craig-Hallum, Inc., Hayne, Miller & Farni, Inc., f/k/a
L'Argent Securities, Inc., and William David Milkes

Disciplinary Referral

After considering the pleadings the testimony, and the evidence presented at the hearing held in Chicago, Illinois on April 20, 1994 and April 21, 1994, the undersigned arbitrators have determined to submit a disciplinary referral as set forth below, to

the NASD District office for their review and determination as to whether any action is appropriate:

1. The arbitrators determined that the broker in the above-captioned matter, William David Milkes, who filed for bankruptcy protection and subsequently was removed as a party to the arbitration, placed a relatively unsophisticated customer's entire portfolio in "growth" stocks;

2. Testimony was taken at the hearing that the broker, William David Milkes, who has been a compliance officer, testified at the hearing as a witness, that he could not tell what is a "conservative" investment or a "speculative" investment.

By The Arbitration Panel:

Dated:

<u>5-23-94</u>	<u>s/s</u>	<u>Douglas D. McFarland, Esq.</u> Douglas D. McFarland, Esq. Presiding, Public Arbitrator
<u>6-8-94</u>	<u>s/s</u>	<u>Harold G.S. King</u> Harold G.S. King Public Arbitrator
<u>5-24-94</u>	<u>s/s</u>	<u>Richard D. Estenson</u> Richard D. Estenson Industry Arbitrator