

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

James T. and Selwyn Matthews

v.

Case #  
93-01456

Name of Respondents

F.N. Wolf & Co., Inc.  
Stanley H. VanEtten  
John Brothers

v.

Name of Third-Party Respondents

Franklin N. Wolf  
John E. Dell  
James R. Guntle  
John Csenge

---

REPRESENTATION

For James T. and Selwyn Matthews ("Claimants"), Michael D. Hurst, Esq. and Bowen C. Houff, Esq. from the law firm of Blanco, Tackabery Comb & Matamoros, P.A., located in Salem, North Carolina.

For Respondents and Third-Party Claimants, Stanley H. VanEtten ("VanEtten") and John Brothers ("Brothers"), Georgina Mollick, Esq. from the law firm of Ragsdale Liggett & Foley, PLLC located in Raleigh, North Carolina.

For Respondent, F.N. Wolf & Co., Inc. ("F.N. Wolf"), Third-Party Respondents, Franklin N. Wolf ("Wolf"), John E. Dell ("Dell"), James R. Guntle ("Guntle") and John Csenge ("Csenge"), Arthur Wyatt, Esq. from the law firm of Reed Smith Shaw & McClay, located in Washington, D.C. and J. Anthony Penry, Esq. local counsel from the law firm of Petree Stockton & McClay located in Raleigh, North Carolina.

### CASE INFORMATION

Statement of Claim was filed on April 5, 1993.  
Claimant's Submission Agreement was signed on April 5, 1993.

Statement of Answer was filed by F.N. Wolf on June 25, 1993.  
F.N. Wolf's Submission Agreement was signed on July 12, 1993.

Statement of Answer, Crossclaims and Third-Party Claims were filed by VanEtten and Brothers on June 25, 1993.  
VanEtten's Submission Agreement was signed on June 25, 1993.  
Brother's Submission Agreement was signed on June 24, 1993.

Third-Party Respondents did not file Statements of Answer or execute Submission Agreements.

### HEARING INFORMATION

Hearing Dates/Session:	June 27, 1994	-	2 sessions
	June 28, 1994	-	2 sessions

Hearing Location: Raleigh, North Carolina.

### CASE SUMMARY

Claimants commenced this arbitration to recover \$99,172.75 in damages from Respondents, F.N. Wolf, VanEtten and Brothers, under the following theories: 1) market manipulation in violation of G.S. Section 78A-12; 2) stock fraud in violation of the North Carolina Securities Act; 3) common law fraud; 4) negligent misrepresentation; 5) breach of contract; and 6) churning.

Claimants allege that Respondents through Brothers solicited them to make purchases based upon F.N. Wolf's "stock of the month" list without regard to Claimants' stated investment objectives which was for a well-rounded, diversified investment portfolio. Specifically, Claimants allege that Respondents urged them to purchase 1000 shares of Automotive Industries, Inc. and an additional 2000 shares when the price of the stock fell, 5000 shares of Authorized Distribution Network and also shares in Digital Products Company. Claimants also allege that Respondents did not advise them to sell even though the price of the stock dropped. Claimants state that Respondents solicited the purchase of Site-Based

Media, Incorporated and represented that Site-Based Media was to merge with National Broadcasting Corporation. Claimants further also state that Respondents failed to disclose the financial condition of Site-Based Media, the individuals who were involved with the merger and the true value of the shares.

Respondent, F.N. Wolf, denies the allegations of wrongdoing and asserts eight affirmative defenses.

Respondents, VanEtten and Brothers, deny the allegations of wrongdoing and contend that he was the registered representative under the direction and control of F.N. Wolf and its controlling parties, Wolf, Dell, Guntle and Csenge. Respondents state that VanEtten did not speak with or execute any trades on Claimants' behalf. Respondents also asserted six affirmative defenses and interposed Crossclaims against F.N. Wolf; and Third-Party Claims against Wolf, Dell, Guntle and Csenge.

Brothers contends that all of the securities purchased in the Claimants' account were not solicited and that the initial trade was placed by Mr. Matthews. Brothers maintains that Mr. Matthews is an experienced investor who had established an account for speculative investment. Brothers also maintain that based upon this information and Mr. Matthews' financial situation, he assisted the Claimants in diversifying their investments to provide for safety and long-term growth along with high-yield and speculation consistent with Claimants' investment objectives. Said Respondent contends that all information provided to them by F.N. Wolf were disclosed to the Claimants. Brothers also contends that their commissions were reduced if they sold securities other than those recommended by F.N. Wolf and that they could not execute a customer's sell order of F.N. Wolf-recommended securities if the order was in excess of \$10,000 without the approval from the controlling parties of F.N. Wolf.

#### **RELIEF REQUESTED**

Claimants request an award of \$99, 172.75, plus interest at the legal rate of eight percent from and after the date of purchase of any unsold shares, additional damages as proven at the hearing, costs, punitive damages and reasonable attorney's fees.

F.N. Wolf requests that the claim be denied, that this matter be dismissed and that any and all costs of this proceeding be assessed against Claimants.

VanEtten and Brothers request: that the claims against them be dismissed and that

Claimants recover from the remaining Respondent and Third-Party Respondents; that if they are found to be liable, that they be indemnified by the remaining Respondent Wolf and Third-Party Respondents; that if they are found to be liable, that they have the right of contribution from the remaining Respondent Wolf and Third-Party Respondents; that they recover all damages sustained as a result of Respondent Wolf and the Third-Party Respondents' actions; costs and attorney's fees; treble damages pursuant to N.C.G.S. Sec. 75-16; and any further relief as the panel deems just and appropriate.

#### **OTHER ISSUES CONSIDERED & DECIDED**

By transmittal letter dated March 29, 1994, Respondent, F.N. Wolf, and Third-Party Respondents, Wolf, Dell, Guntle and Csenge, filed a Motion to Dismiss, Stay and/or Sever Crossclaims and Third-Party Claims. Respondents and Cross-Claimants, VanEtten and Brothers, submitted opposition papers dated April 11th and 20th, 1994. Prior to the hearing, the panel reviewed the Motions including Claimants' response dated April 12, 1994, and reserved decision. The moving parties then moved in Superior Court of the State of North Carolina to stay the arbitration of the Crossclaims and the Third-Party Claims. The Court granted the stay until the Court heard the matter on June 27, 1994, or until the panel allowed the Motions, which would render the June 27, 1994 hearing moot. This panel ruled that it had jurisdiction to hear the Crossclaims and Third-Party Claims. The Court also ruled that the claims were arbitrable but before an all industry panel.

After the conclusion of the Claimants' case and the defense, this panel was informed that Respondents, VanEtten and Brothers, filed a Notice of Dismissal of Certain Crossclaims and Third-Party Claims with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing concerning the Claimants' claims against Respondents, F.N. Wolf, VanEtten and Brothers, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants are awarded a total amount of EIGHTY SEVEN THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS AND ZERO CENTS (\$87,750.00) which shall be paid as stated in the ensuing paragraphs;
2. F.N. Wolf is hereby liable and shall pay Claimants SEVENTY

**THREE THOUSAND DOLLARS AND ZERO CENTS (\$73,000.00) plus interest in the amount of SIX THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS AND ZERO CENTS (\$6,750.00);**

3. Stanley VanEtten is hereby liable and shall pay Claimants **ONE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$1,500.00);**

4. John Brothers is hereby liable and shall pay Claimants **FIVE HUNDRED DOLLARS AND ZERO CENTS (\$500.00);**

5. F.N. Wolf is further liable for costs and shall pay Claimants **ONE THOUSAND DOLLARS AND ZERO CENTS (\$1,000.00);**

6. F.N. Wolf is further liable for attorney's fees and shall pay Claimants **FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5000.00);**

7. The claim for punitive damages is denied;

8. All other claim for relief is denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable Claim Filing Fee	-	\$150.00
Non-refundable Cross-Claim and Third-Party Claim Filing Fee	-	\$500.00
Hearing Session Fees	-	\$2000.00 (4 sessions x \$500.00 per session)
Total Fees	-	\$2650.00

1. Claimants are assessed a \$150.00 non-refundable filing fee. Claimants previously paid \$650.00 and are entitled to a refund in the amount of \$500.00.

2. VanEtten and Brothers are assessed \$500.00 non-refundable filing fee. They previously paid \$1100.00 and are entitled to a refund in the amount of \$600.00.

3. F.N. Wolf is assessed \$2000.00 in hearing sessions fees and shall satisfy

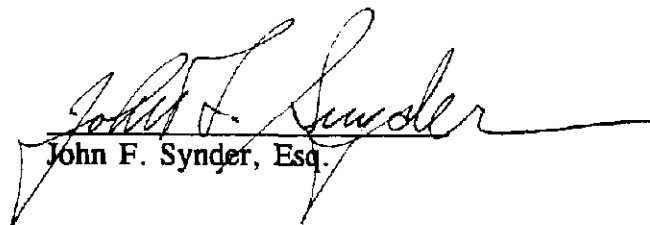
the fees assessed by reimbursing Claimant \$500.00 and VanEtten and Brothers \$600.00 and by remitting the balance \$900.00 to the NASD.

Fees due to the NASD shall be made payable to the National Association of Securities Dealers, Inc.

**ARBITRATION PANEL**

John F. Synder, Esq.	-	Public Chairperson
John R. Canada	-	Public Panelist
Guy L. Nichols	-	Industry Panelist

Concurring Arbitrator's Signature

  
John F. Synder, Esq.

Date of Decision: August 15, 1994


the fees assessed by reimbursing Claimant \$500.00 and VanEtten and Brothers \$600.00 and by remitting the balance \$900.00 to the NASD.

Fees due to the NASD shall be made payable to the National Association of Securities Dealers, Inc.

**ARBITRATION PANEL**

John F. Synder, Esq.	-	Public Chairperson
John R. Canada	-	Public Panelist
Guy L. Nichols	-	Industry Panelist

Concurring Arbitrator's Signature

  
\_\_\_\_\_  
John R. Canada

Date of Decision: AUGUST 15, 1994

Page 6  
Case #93-01456

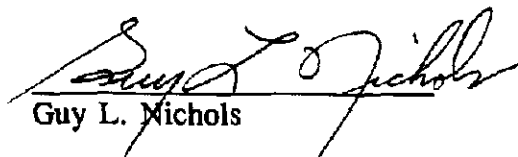
the fees assessed by reimbursing Claimant \$500.00 and VanEtten and Brothers \$600.00 and by remitting the balance \$900.00 to the NASD.

Fees due to the NASD shall be made payable to the National Association of Securities Dealers, Inc.

**ARBITRATION PANEL**

John F. Synder, Esq.	-	Public Chairperson
John R. Canada	-	Public Panelist
Guy L. Nichols	-	Industry Panelist

Concurring Arbitrator's Signature

  
Guy L. Nichols

Date of Decision: AUGUST 15, 1994