

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Gary J. and Linda K. Stefani

93-02145

Name of Respondent

USAA Investment Management Company

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on May 28, 1993, Claimants Gary and Linda Stefani, who appeared Pro Se, alleged that Respondent USAA Investment Management Company failed to provide adequate communication services for them to contact the firm to request the liquidation of the USAA Gold Fund, which had declined in value. The Claimants contended that at the time, they were stationed in Germany and had made numerous attempts to call the agent to liquidate the account, but they consistently received busy signals or were transferred to a "hold line" with a tape recorded message indicating all agents were busy. The Claimants further contended that they got no results in their many attempts to reach the firm through any of its lines and because of this, they were unable to place a timely order to sell the fund in question, and further, that due to the delay of their ability to place the order, the Respondents should be held liable for the damages they have incurred.

Respondent USAA Investment Management Company, through its in-house counsel Henry Valdespino, Jr., Esq., maintained that the allegations made by the Claimants are unsupported by any documentation, and that they have not complied with the minimal requirements for filing a claim. The Respondent also maintained that the filing of this claim and its contents are inconsistent with prior written submissions from the Claimants to the NASD and the Respondent, and also that they did not suffer any damages nor have they shown the damages they suffered because of a telephone communications problem. Respondent USAA maintained that it committed no wrongdoing and therefore, should not be held liable in this matter.

In a reply to the Statement of Answer, Claimants Gary & Linda Stefani refuted the defenses of the Respondent and reiterated that the Respondent should be held liable for the loss they incurred due to the inadequate telephone service, causing them to be unable to liquidate their USAA Gold Fund when they wanted to.

**RELIEF REQUESTED**

Claimants Gary & Linda Stefani requested \$6,386.20 in actual damages.

Respondent USAA Investment Management Company requested that the claims of the Claimants be dismissed, and that it be awarded its costs and expenses, including attorney's fees.

**OTHER ISSUES CONSIDERED & DECIDED**

Respondent USAA Investment Management Company, again through its in-house counsel Henry Valdespino, Jr., Esq. filed three motions for dismissal of this arbitration proceeding. The first issue raised concerning Section 15 of the NASD Code of Arbitration Procedure, was denied administratively by the Director of Arbitration. The other two matters being substantive issues, were reviewed and considered by the arbitrator, and were determined as follows:

1. The motion to dismiss due to the claim having been previously filed with the NASD is hereby denied.
2. The motion to dismiss due to contradictory positions by the Claimants which should preclude availability of the arbitration process is hereby denied.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert Cohn, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 19, 1993 and by the Respondent on August 27, 1993.

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. The claims of the Claimants Gary and Linda Stefani against Respondent USAA Investment Management Company are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **HERBERT COHN, ESQ.**, 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.

A handwritten signature in cursive script, appearing to read "Herbert B. Cohn", is written over a horizontal line.

Signature of Arbitrator

**DATE OF DECISION:** December 28, 1993