

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

In the Matter of the Arbitration Between

Name of Claimant

Murray Sobie

Case No. 93-02165

Names of Respondents

Tucker Anthony Incorporated  
Gabriele, Hueglin, & Cashman, Inc.  
David A. Zwick

---

**REPRESENTATION**

For Claimant, Murray Sobie ("Sobie"): Robert W. Pearce of Lerner & Pearce, P.A.

For Respondents, Tucker Anthony, Inc. ("Tucker") and Gabriel, Hueglin and Cashman, Inc. ("GH&C") and David Zwick ("Zwick"): Patrick J. Howley, Esq. of Tucker Anthony, Inc.

**CASE INFORMATION**

Statement of Claim filed: June 1, 1993. Claimant's Submission Agreement signed on: April 9, 1993.

Respondents, Tucker, GH&C and Zwick's, Joint Statement of Answer filed: August 13, 1993. Respondent, Tucker's Submission Agreement and Corporate Acknowledgment signed on: August 13, 1993 by Patrick J. Howley on behalf of Tucker. Respondent, Zwick's Submission Agreement signed on October 17, 1994.

**HEARING INFORMATION**

On July 29, 1994, a Pre-hearing Conference lasting (1) session was conducted via telephone conference call with an arbitrator.

On September 19 and 20, 1994, in Fort Lauderdale, Florida, a hearing lasting four (4) sessions was conducted.

### **CASE SUMMARY**

Claimant Alleged; that he is a seventy-four year old retiree whose primary investment experience, prior to meeting Respondents, was purchasing utility stocks and municipal bonds for the long term; that in May, 1990, Claimant was persuaded by Respondent, Zwick, to transfer his IRA account to Respondent, GH & C, a division of Respondent, Tucker; that shortly thereafter, Zwick persuaded Claimant to sell his zero coupon certificate of accrual treasury certificates ("CATS") and use the proceeds to purchase what was described as zero coupon collateralized mortgage obligations ("CMOS"); that in connection with the swap, Zwick represented that Claimant would be trading out of an average yield of 9% and into an average yield of 10.19%; that the switch would provide Claimant with a 1 1/4% advantage without altering the quality or maturity of the investment; that the face amount of the CMO would exceed the face value of the CATS by the year 2001, by over \$350,000.00; and thereafter, Claimant would receive interest on the CMOS at the stated coupon rate of approximately 10%. Claimant further alleged that Zwick's representations were false and that the Respondents failed to disclose that the CMOS could be called early and deprive him of the benefits that Zwick represented he would receive over the long term; that the Respondents violated Sections 517.301, and committed common law fraud, breach of fiduciary duty, negligence and breach of contract.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant had been investing on his own for over thirty years and had accounts at over twenty different brokerage houses; that Claimant has a diversified portfolio and a net worth of over six million dollars; that Claimant, like other investors, sought to maximize yield while protecting the principal of his investment. Respondents further alleged that Claimant had purchased CMO's on his own before the trades in question and that Claimant was fully informed by Zwick that the CMO's could be called before maturity; that Claimant received a GH & C Newsletter that specifically stated that CMO investors give up call protection for higher yield. Respondents further stated that Zwick has a spotless record; that Zwick's honesty, integrity and ethics have never been challenged; that Claimant received a full return of his principal, with interest, when the CMO's were called; that Claimant could have repurchased the Z-coupon Treasuries after the CMO's were called for a small additional price but, instead, chose to purchase more CMO's; that Claimant knowingly entered into the "swap" transaction.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$716,317.00 with interest, punitive damages and attorneys' fees and costs incurred in his prosecution of his claim.

Respondents requested that this matter be dismissed in its entirety.

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

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

1. Respondents, Tucker, GH&C, and Zwick, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorneys' fees costs and punitive damages are hereby denied.

### **OTHER COSTS**

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding including attorneys fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,300.00 (1 Pre-hearing Conference X \$300.00 plus four (4) hearing sessions x \$750.00 per session).

1. Claimant is hereby assessed Forum Fees in the amount of \$1,100.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of the \$350.00.
2. Respondents, Tucker and GH&C, are hereby assessed, jointly and severally, Forum Fees in the amount of \$2,200.00, payable to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
Stan West, Esq.

Public/Chairperson

/s/

\_\_\_\_\_  
James M. Dunne

Public/Panelist

/s/

\_\_\_\_\_  
Edward S. Burstein

Industry/Panelist

Date of Decision: November 4, 1994