

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Col. Joseph Klocek & Janice Klocek

93-02211

Name of Respondents

Lance Hering  
F.N. Wolf & Co., Inc.

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**REPRESENTATION**

For Claimants Col. Joseph Klocek & Janice Klocek ("Claimants"): Jeffrey S. Jacobovitz, Esq. of the law firm of Jacobovitz, English & Smith

For Respondents F.N. Wolf & Co., Inc. and Lance Hering ("Respondents"): John R. Erickson, Esq. of the law firm of Reed Smith Shaw & McClay

**CASE INFORMATION**

Statement of Claim filed: June 1, 1993

Claimant Col. Joseph Klocek (*hereinafter* "Klocek") Submission Agreement signed on: May 28, 1993

Claimant Janice Klocek's Submission Agreement signed on May 26, 1993.

Joint Statement of Answer filed by Respondents on: August 31, 1993

F.N. Wolf & Co., Inc.'s ("F.N. Wolf") Submission Agreement signed on: August 26, 1993

Lance Hering's ("Hering") Submission Agreement signed on: August 30, 1993

**HEARING INFORMATION**

Hearing Dates/Sessions: April 19, 1994 - two sessions  
April 20, 1994 - two session

Hearing Location: NASD Offices, Washington, D.C.

### CASE SUMMARY

Claimants alleged that Hering initiated a client/broker relationship when he cold called the Claimants. Claimants alleged that Hering had a reputation for cold calling military individuals in the Department of Defense. Claimants alleged that Hering made material misrepresentations and omitted material facts in order to induce Claimants to trade with him. Claimants alleged that Hering and F.N. Wolf failed to disclose materials facts regarding F.N. Wolf, stocks that it "pushed" and failed to disclose Robert Brennen's connection to F.N. Wolf. Claimants alleged that Hering pushed Klocek into purchasing high risk penny stocks in which F.N. Wolf was a market maker. Claimants alleged that they relied on Hering's expertise. Claimants alleged that Hering made material false statements and provided misleading information to induce Claimants to purchase Treats International Enterprises, Inc. and other stocks. Claimants alleged that these stocks were unsuitable and that F.N. Wolf had "stacked the deck" against Claimants as well as other investors. Claimants alleged that Respondents violated 10(b) of the Exchange Act and Rule 10(b)(5). Claimants alleged that Respondents engaged in negligence and bad faith. Claimants alleged that Respondents failed to properly handle Claimants account and that Respondents violated the common law doctrines of fraud and deceit.

Respondents categorically denied all allegations of wrongdoing and specifically maintained that Claimants account was properly handled at all times. Respondents maintained that Klocek was a sophisticated investor who knew the risks associated with high risk stocks. Respondents maintained that Klocek sought higher risk investments in hopes of higher returns. Respondents maintained that all investments that Claimants entered into were suitable. Respondents maintained that Klocek controlled the account and that Klocek sought to hold onto his investments even though they were depreciating in value. Respondents denied all allegations of fraud or deceit and maintained that all material information was disclosed to Claimants. Respondents maintained that the investment strategy employed was Klocek's strategy and that Respondents should not be held responsible for his losses.

### RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$106,000, plus 6% interest from the time the losses were incurred. Claimants also requested opportunity costs, attorneys' fees, plus punitive damages in the amount of

\$1,000,000.

Respondents requested that Claimants claim be dismissed in its entirety and that all costs and expenses associated with this arbitration be assessed against Claimants.

### **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.

Janice Klocek did not appear at the hearings and it was the understanding of the parties, counsel and the Panel that her non-appearance was Claimants decision and she was not required to appear.

### **AWARD**

After considering the pleadings, 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. That Respondents F.N. Wolf and Hering are jointly and severally liable to the Claimants and shall pay to the Claimants the sum of \$50,000; no interest is awarded on this amount.
2. That Respondent F.N. Wolf is liable to the Claimants for an additional \$35,000; no interest is awarded on this amount.
3. That Claimants claims for punitive damages, opportunity costs, attorneys' fees and interest are denied in their entirety.
4. That any and all other claims are denied and that the parties shall bear their respective costs and attorneys fees except for as specifically provided for below.

### **FORUM FEES**

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

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4 sessions X \$1,000 = \$4,000

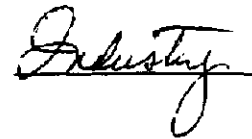
Forum Fees Assessed Against: 50% against Claimants and 50% against Respondent F.N. Wolf. Claimants are assessed Forum Fees in the amount of \$2,000; however, Claimants are entitled to offset this fee with their hearing session deposit of \$1,000 previously filed. Claimants owe and shall pay Forum fees in the amount of \$1,000. Respondent F.N. Wolf owes and shall pay Forum Fees on the amount of \$2,000.

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

Concurring Arbitrator's Signature  
Name

  
Bonnie K. Wachtel

Public/Industry



NASD Date of Decision: May 6th, 1994

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

Concurring Arbitrator's Signature  
Name

Public/Industry

Michael Fischetti  
Michael Fischetti

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Concurring Arbitrator's Signature  
Name

Public/~~Industry~~

  
Gerald P. LeNoir

Date of Decision:

May 2, 1994

NASD Date of Decision: May 6th, 1994