

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

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

William S. Giles  
Barbara M. Giles

v.

NASD Arbitration  
No. 93-03818

Name of Respondent(s)

First Affiliated Securities  
G.R. Stuart & Company, Inc.  
Henry R. Fisher

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**REPRESENTATION**

For Claimants: Mark I. Schickman, Esq., Fox & Grove, San Francisco, California

For Respondent First Affiliated Securities:

Jonathan Bekhor, La Jolla, California

For Respondent Henry R. Fisher:

Paul G. Sloan, Esq., San Rafael, California

**CASE INFORMATION**

Statement of Claim filed: September 23, 1993

Claimants' Submission Agreement signed: January 13, 1994

Joint Statement of Answer filed by First Affiliated Securities, et al.: September 6, 1994

Respondent Fisher did not file a written answer.

Respondents' Submission Agreements signed: None submitted

### HEARING INFORMATION

The hearing was held in San Francisco, California, as follows:

Hearing Dates / Sessions:	May 22, 1995	-	2 sessions
	May 23, 1995	-	2 sessions

### CASE SUMMARY

Claimants alleged the mishandling of Claimants' investment accounts for the period October 1987 through February 1993. Claimants further alleged the actions of Respondents caused them economic losses and damages, including mental distress as a result of their losses. Specifically, the Giles alleged that Henry Fisher:

- a) Engaged in unauthorized securities, options, and margin transactions that were unsuitable for the Giles' investment purposes;
- b) Purchased and sold securities without their knowledge and permission;
- c) Engaged in a scheme to defraud the Giles by excessively trading securities in Claimants' accounts without their knowledge or permission;
- d) Converted money from the Giles' cash account by diverting it into bank accounts opened in the Giles' name, and thereafter transferring the money from that account to another;
- e) Converted to his own use proceeds from a check in the amount of \$35,000, payable personally to Henry Fisher, given to him by the Giles on the pretense the proceeds from the check would be used for securities investment purposes.

Claimants further alleged that First Affiliated Securities, the employer of Henry Fisher, was negligent in its failure to supervise his activities.

The Giles claimed damages resulting from loss of capital due to unsuitable and unauthorized investments; commissions charged on unauthorized trades; interest paid on unauthorized margin accounts; and losses caused by the conversion of funds by Henry Fisher to his personal use.

Claimants also alleged they are entitled to punitive damages based on Henry Fisher's active fraud and defalcation, citing California Code of Civil Procedure, Section 3294 and Mastrobuono

v. Shearson Lehman Hutton, Inc., (115 S.Ct. 1212 (1995).

First Affiliated Securities filed an Answer, generally denying liability. They raised affirmative defenses alleging Claimants were responsible for their losses in that they themselves were negligent in handling their accounts, failure to mitigate damages, and that the claim was barred by the principle of laches.

Although there were other named Respondents, all were dismissed prior to the hearing.

### **RELIEF REQUESTED**

Claimants requested damages of \$993,267.10, plus punitive damages, emotional distress damages, interest, costs of arbitration and attorney's fees.

Respondents requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Although Respondent Henry R. Fisher did not file an Answer or a submission agreement, he appeared at the hearing represented by counsel. As the first order of business at the hearing on May 22, 1995, Mr. Fisher's counsel contested NASD jurisdiction for purposes of proceeding with the case at that time based on imperfect service. After hearing the arguments of counsel, and after reviewing the NASD administrative file, the panel determined that jurisdiction had been obtained and ruled that the case would proceed.

Respondent First Affiliated Securities filed a written Answer, but there was no appearance at hearing on behalf of this Respondent.

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 original remains 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:

1. As the result of investment in unsuitable and unauthorized securities, Respondents Henry Fisher and First Affiliated Securities are jointly and severally liable to Dr. William and

Barbara Giles in the amount of \$316,500.

2. As the result of active fraud, Respondent Henry Fisher is further liable to Dr. William and Barbara Giles in the amount of \$27,500.

3. As the result of defalcation, Respondent Henry Fisher is further liable to Dr. William and Barbara Giles in the amount of \$106,000.

4. As the result of fraudulent and reprehensible conduct in trading excessively in Claimants' accounts and the conversion of Claimants' funds, Respondent Henry Fisher is liable in punitive damages to Dr. William and Barbara Giles in the amount of \$400,500, pursuant to California Code of Civil Procedure, Section 3294, and Mastrobuono v. Shearson Lehman Hutton, Inc., 115 S.Ct. 1212 (1995).

5. The parties shall each bear their respective costs, including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$250 non-refundable filing fee and the \$1000 hearing session deposit paid by Claimants.

Respondents are jointly and severally liable for the reimbursement to Claimants of the \$250 non-refundable filing fee and the \$1000 hearing session deposit paid by Claimants.

Respondents are jointly and severally liable for all forum fees calculated as follows:

Four hearing sessions @ \$1000/session	=	\$ 4,000
Credit for deposit	=	<u>1,000</u>
Balance due NASD	=	\$ 3,000

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

#### ARBITRATORS

Name ..... Public / Industry

Alfred P. Knoll

Public Arbitrator

John T. Collentine

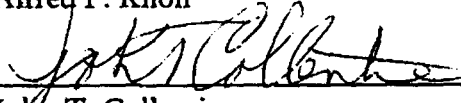
Public Arbitrator

Terrence W. Dorsey

Industry Arbitrator

Concurring Arbitrators' Signatures

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Alfred P. Knoll

  
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John T. Collentine

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Terrence W. Dorsey

Date Served: 07/21/95