

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Richard W. and Joy M. Hamon

93-04201

Name of Respondent

Robert H. Taggart, Jr.

REPRESENTATION

Claimants Richard W. and Joy M. Hamon ("Claimants") were represented by John P. Connolly, Esq., Alexandria, VA.

Respondent Robert H. Taggart ("Respondent") was represented by James C. Cosby, Esq., Maloney, Barr & Huennekene, Richmond, VA.

CASE INFORMATION

The Statement of Claim was filed October 13, 1993.

Claimants' Uniform Submission Agreement was signed October 6, 1993.

Respondent's Statement of Answer was filed February 18, 1994.

Respondent's Uniform Submission Agreement was signed February 17, 1994.

HEARING INFORMATION

Prehearing Dates/Sessions: August 11, 1994/one session
August 16, 1994/one session

Hearing Dates/Sessions: August 29, 1994/one session

Hearing Location: NASD District Office
Washington, D.C.

Hearing Dates/Sessions: March 4, 1997/two sessions
March 5, 1997/two sessions
March 6, 1997/one session

Hearing Location: NASD Headquarters
Washington, D.C.

CASE SUMMARY

Claimants alleged, among other things, that Respondent induced them to authorize unsuitable securities in light of their investment goals and objectives. Claimants alleged that Respondent contacted them in a "cold call" in late 1988 or early 1989. Claimants alleged that they informed Respondent that they were very conservative investors, investing in quality growth stocks and holding them for the long term. Claimants alleged that they clearly stated to Respondent that due to their imminent retirement, it was critical that their investment funds be protected in order to supplement their retirement income from the U.S. Navy. Claimants alleged that Respondent persistently assured Claimants that he and his firm specialized in "small cap" stocks which would not only meet Claimants' investment objectives but would provide a significantly greater return than the stocks in which Claimants had customarily invested. Claimants also alleged that Respondent stated his firm's expertise in providing customers with investment advice due its well-equipped research staff. Claimants alleged that a short time later Respondent persuaded Claimants to authorize the purchase of 1,000 shares of Ovex Fertility Corporation (subsequently known as "North American Vaccine") based on Respondent's firm having a close business relationship as well as a personal relationship with the principal of North American Vaccine. Claimants alleged that they reasonably relied upon Respondent's assurances of expertise and their intimate knowledge of North American Vaccine.

Claimants alleged that Mr. Hamon had a meeting with Respondent at which time, in addition to informing Respondent that Claimants would have approximately \$150,000.00 from the sale of their home to invest, Mr. Hamon reiterated that Claimants' primary objective was safety of principal and conservation of assets. Claimants alleged that Respondent consistently assured Mr. Hamon that Respondent could offer investments with low risk that would provide much greater returns than they could expect from their Merrill Lynch account. Understanding that Respondent clearly understood their investment objective and agreed to fully comply with these stated objectives, Claimants alleged that they trusted Respondent to fulfil his fiduciary obligations. Claimants alleged that Respondent exercised de facto control over Claimants' account due to Claimants' reliance on Respondent's expertise and knowledge of Claimants' objectives.

Claimants alleged that when Respondent would call with recommendations he was always quite emotional and persistent, telling Claimants that they must commit immediately as the opportunity was extremely perishable and, in the case of Initial Public Offerings ("IPO"), that there were many other investors waiting for the change to take whatever positions Claimants did not want. As with North American Vaccine, Claimants alleged that Respondent always assured Claimants that Respondent's firm had first hand knowledge of the investment opportunity based on his firm's business and personal relationship with principals. As a result, Claimants alleged that during the period of January 1989 through March, 1992, Respondent controlled the trading of securities in Claimants' account, which included the purchase of speculative, over-the-counter "penny stocks" which Respondent knew were contrary to Claimants' expressed desire for secure and safe investments. Claimants alleged that Respondent's firm was a market-maker in these securities which it sought to sell from its inventory for its own benefit, notwithstanding the fact that Respondent knew that these speculative securities were absolutely contrary to Claimants' clearly, and oft expressed, investment objectives. In addition to North American Vaccine, Respondent utilized misrepresentations and omissions of material facts necessary for Claimants to make an informed decision, to induce Claimants to purchase Keystone Camera, BT Telecom, Inc. (subsequently known as Versus Technology, Inc.), Mascott, Automotive Industries, Inc., Poseidon Pools American, Inc., Martinez and Murphy, Wolf Financial Group, Twin Star Productions, Lidak Pharmaceutical, and ATNN. Claimants alleged that Respondent made these misrepresentations knowing them to be untrue and also purposefully omitted crucial information. Claimants alleged that at a minimum, Respondent's actions

were grossly negligent as they were made with a reckless disregard for the truth and a disregard as to his duty to Claimants when he intentionally deceived them. Claimants alleged that Respondent failed to inform them that the subject securities were highly speculative, involving both a high degree of risk and a substantial risk of immediate dilution of value which were totally unsuitable for Claimants' expressly stated investment objectives and that Respondent was using Claimants' account for his own benefit and interest without regard for the best interest of Claimants. Claimants alleged that of the nineteen stocks recommended by Respondent, three have been declared worthless, four were unpriced at the time of filing this action, and six have been sold with the proceeds from all sales reinvested in other stocks resulting in further losses.

Claimants alleged that Respondent's actions violated Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; Section 12(2) and Section 15 of the Securities Act of 1933; Section 13.1-502 of the Code of Virginia, the NASD Rules of Fair Practice; and constituted a breach of contract, fraud and deceit as well as a breach of the fiduciary duty owed to Claimants.

Respondent denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondent maintained that prior to Claimants opening their joint account with F.N. Wolf & Co., Inc., Respondent introduced himself and explained the firm as specializing in small to medium sized growth companies that trade on the NASDAQ. Respondent maintained that Claimants informed him that they had an annual income of approximately \$60,000.00, a net worth, exclusive of residence of \$400,000.00, and a liquid net worth of \$20,000.00 and that Claimants had no dependents. While Respondent maintained that Mr. Hamon did say that he would soon be retiring from the U.S. Navy, he also stated that he would continue working after retirement.

Respondent maintained that Claimants had approximately twenty years experience trading stocks and bonds and ten years trading options. Respondent maintained that Mr. Hamon informed him that his investment objectives were long-term growth and speculation, and specifically noted that Claimants were looking for a better return than they were currently getting on their investments at Merrill Lynch. Respondent maintained that Claimants were informed that the firm made a market in many NASDAQ stocks, and that customers paid a mark-up or a mark-down instead of commissions on transactions involving these stocks. Respondent maintained that Claimants stated that they were interested in having recommendations from Respondent as to which stocks to invest in. Respondent maintained that Claimants knew that the securities recommended were speculative as many of them were traded over-the-counter and low priced.

Respondent maintained that he made various recommendations to Claimants concerning securities in approximately eighteen companies in diversified industries. Respondent maintained that confirmations were promptly sent on all transactions. Respondent maintained that the securities were fully discussed with Claimants prior to any transaction, and the risk associated with such an investment and on several occasions Claimants decided not to invest. Respondent maintained that in each IPO, Claimants received a preliminary prospectus and a final prospectus was sent with the confirmations. Respondent maintained that each prospectus contained extensive disclosures of the risks associated with the securities being offered.

Respondent maintained that Claimants were at all times fully aware of the status of their account and received regular account statements. In addition, Respondent maintained that he and Mr. Hamon talked periodically on the telephone about Claimants' account and the market. Respondent raised the affirmative defenses of: the Statement of Claim fails to state a claim upon which relief can be granted; claims barred

by the applicable statutes of limitations; no private right of action under the NASD Rules of Fair Practice; Respondent had no contract with Claimants; statute of frauds; failure to mitigate their losses; Respondent was not a "seller" within the meaning of Section 12(2) of the Securities Act of 1933; and that there is no basis for punitive damages. In addition, Respondent maintained that any losses suffered by Claimants were the result of Claimants' own decisions as to investments and fluctuations in the market.

RELIEF REQUESTED

Claimants requested relief in the amount of \$93,000.00 in compensatory damages; \$30,000.00 in lost opportunity damages; interest from the date of the activities complained up to the time of payment; punitive damages in the sum of \$200,000.00 as well as the costs and expenses of this arbitration including attorney's fees.

Respondent requested that the Statement of Claim 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.

The panel considered Respondent's Motion To Dismiss all claims as to Gentner Communications, Great American Recreation, Personal Diagnostics, Poseidon Pools, Wolf Financial Group, CCC Franchising, Nacoma and Digital under Rule 10301(d)(2), and Claimants' Response thereto, and granted the Motion as to Nacoma, CCC Franchising and Digital.

The panel considered Respondent's Motion To Dismiss the claims under the applicable statute of limitations and Claimants' Response, and denied the Motion.

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. That Respondent's conduct constituted fraud and thus Respondent is liable to and shall pay to Claimants damages in the amount of \$35,000.00.
2. That the claim for punitive damages is denied.
3. That each party shall bear its own costs and expenses including attorney's fees, with the exception of Forum Fees as specified below.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

1 prehearing x \$300.00 = \$300.00
1 prehearing, fee waived

6 sessions x \$750.00 = \$4,500.00

Total Forum Fees = \$4,800.00

Forum Fees are assessed at fifty percent to Claimants and fifty percent to Respondent. Claimants are to receive a credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving Claimants a net assessment due of \$1,650.00. Respondent has a net assessment due of \$2,400.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

3/24/97

Barton B. Skeen, Jr.

Barton B. Skeen, Jr., Presiding
Public Arbitrator

Elaine A. Sehart-Green
Public Arbitrator

Arthur J. Salzberg
Industry Arbitrator

Date Decision Served by NASD Regulation: March 31, 1997

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CONCURRING ARBITRATORS' SIGNATURES

Barton B. Skeen, Jr., Presiding
Public Arbitrator

March 19, 1997

Elaine A. Seht-Green
Elaine A. Seht-Green
Public Arbitrator

Arthur J. Salzberg
Industry Arbitrator

Date Decision Served by NASD Regulation: March 31, 1997

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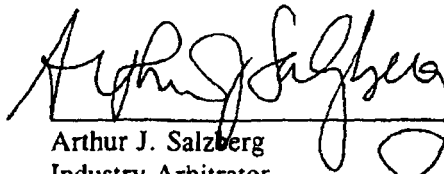
DATE

CONCURRING ARBITRATORS' SIGNATURES

Barton B. Skeen, Jr., Presiding
Public Arbitrator

Elaine A. Sehart-Green
Public Arbitrator

3-19-97



Arthur J. Salzberg
Industry Arbitrator

Date Decision Served by NASD Regulation: March 31/1997