

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Rick Gaines

93-04584

Name of Respondents

F.N. Wolf & Co., Inc.
Michael O'Brien
John J. Pocock, III

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 2, 1993, Claimant Rick Gaines, through his representative J. Pat Sadler, Esq. of Sadler & Associates, Atlanta, Georgia, alleged that Respondent Michael O'Brien, a broker at Respondent F.N. Wolf & Co., Inc., sold him 500 shares of Site Based Media Incorporated stock ("Site Based Media"). Claimant further alleged that when the price of Site Based Media began to fall, he was told by Respondent Michael O'Brien that the decline would only be temporary. Claimant contended that he purchased an additional 300 shares of Site Based Media as a result of Respondent Michael O'Brien's statement that the stock would soon increase in value to a level above his original purchase price. Claimant further contended that his investment in Site Based Media is virtually worthless. Claimant alleged that Respondent John J. Pocock III, a broker at Respondent F. N. Wolf & Co., Inc., never returned his calls when Claimant's account was assigned to him. Claimant further alleged that he relied on the Respondents for guidance and advice about his investments, since his experience with investments was limited. Claimant contended that he has claims based on unsuitability, breach of fiduciary duty, omissions and misrepresentations of material facts, and "common law" fraud and negligence. As a result of the above, Claimant contended that he has suffered damages for which the Respondents should be held liable.

Respondents F.N. Wolf & Co., Inc., Michael O'Brien and John J. Pocock, III, through their counsel, James C. Cosby of Maloney, Yeatts & Barr, Richmond, Virginia, maintained that Claimant was sufficiently educated and suitable as an investor to make the two purchases of Site Based Media stock in question, since he was earning \$29,000.00 a year at the time these purchases were made, is single with no dependents, and owns his own home. Respondents contended that Respondent Michael O'Brien recommended to Claimant common stocks in small to mid-cap companies, as well as more conservative investments where principal would be guaranteed. Respondents further contended that in making both purchases of Site Based Media, Claimant made an independent decision to buy based on recommendations that were accurately and fairly made to him. Respondents further contended that Claimant alleged no deceit or wrongdoing by Respondent John J. Pocock III at any time. Respondents further alleged that Claimant's allegations of unsuitability, breach of fiduciary duty, fraud, and negligence are not supported by the facts of Claimant's account. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Rick Gaines requested \$5,159.25 in actual damages, \$637.68 in interest, \$250.00 in attorney's fees, \$150.00 in filing fees and \$2,500.00 in punitive damages.

Respondents F.N. Wolf & Co., Inc., Michael O'Brien and John J. Pocock III requested that the Claimant's Statement of Claim be dismissed in its entirety.

AWARD

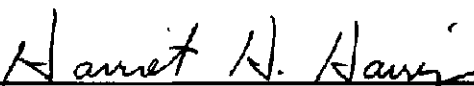
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Harriet H. Harris, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 27, 1993, by Respondent F.N. Wolf & Co., Inc. on December 2, 1993, by Respondent Michael O'Brien on December 28, 1993, and by Respondent John J. Pocock III on November 30, 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 Claimant Rick Gaines against Respondents F.N. Wolf & Co., Inc., Michael O'Brien and John J. Pocock, III are dismissed in their entirety.
2. The parties shall bear their respective costs, including attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc., by the Claimant shall be retained by the NASD, Inc. Respondents F.N. Wolf & Co., Inc. and Michael O'Brien are jointly and severally liable and shall pay to Claimant \$75.00 as partial reimbursement of the filing fee.

AFFIRMATION

I, Harriet H. Harris, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: July 18, 1994