

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Norbert and Elke M. Klauzens
Michele Klauzens-Gausselin

and

94-00096

Name of Respondent

Ernst & Company
Paul Mohling

REPRESENTATION OF PARTIES

Norbert and Elke M. Klauzens and Michele Klauzens-Gausselin ("**Claimants**") were represented by Steven Glickman, Esq., Chuhak & Tecson, P.C., Chicago, IL.

Ernst & Company ("**Respondent Ernst**") and Paul Mohling ("**Respondent Mohling**") (collectively as "**Respondents**") were represented by Paula K. Maguire, Esq., Friedman & Holtz, P.C., Chicago, IL.

CASE INFORMATION

The Statement of Claim was filed on or about January 10, 1994. Amended Statement of Claim dated April 25, 1994. Supplemental Statement of Claim was filed on or about August 22, 1994. Submission Agreement of Claimants Norbert and Elke M. Klauzens was signed on February 28, 1994. Claimant Michele Klauzens-Gausselin did not submit an executed Submission Agreement.

Answer and Affirmative Defenses to Statement of Claim was filed by Respondents Ernst & Company and Paul Mohling on or about May 24, 1994. Answer and Affirmative Defenses to Supplemental Statement of Claim was filed by Respondents Ernst & Company and Paul Mohling on or about February 3, 1995. Submission Agreement of Respondent Ernst & Company was signed on May 20, 1994 by Raymond Hofer, Jr. Submission Agreement of Respondent Paul Mohling was signed on April 18, 1994.

HEARING INFORMATION

The hearing was held on March 1, 1995, for one (1) session, May 23, 1995 for two (2) sessions, May 24, 1995 for two (2) sessions and May 25, 1995 for one (1) session in Chicago, Illinois for a total of six (6) sessions.

CASE SUMMARY

Claimants alleged that they went to Respondent Mohling and Ernst & Company to invest their money in a conservative fashion. Claimants also alleged that Respondents stated and specifically offered to open and handle their accounts and only invest in a limited number of "blue chip" stocks; keep them "close to shore"; minimize losses; strive for 20% per year return; and not trade in any new issues or options or sell issues short. It was alleged that Respondents failed to comply with their offer and made recommendations in all stocks; executed trades prior to the acknowledgement and approval of Claimants; and engaged in excessive trading. Claimants stated that the actions of Respondents constituted breach of contract; breach of fiduciary duty; fraud; negligence; and failure to supervise by Respondent Ernst & Company.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant Norbert Klauzens had stated that he wished to open the account to pursue a more aggressive investment strategy and because commissions charged by his previous broker were too high. Additionally, Respondents stated that Norbert Klauzens requested Respondent Mohling to execute orders which Respondent Mohling did not recommend and specifically discouraged; that all transactions in the accounts were at the direction of and with prior knowledge and approval of Claimants. Respondents asserted affirmative defenses including but not limited to: failure to state a claim for breach of contract; failure to state a claim for breach of fiduciary duty; failure to state a claim for fraud; failure to state a claim for failure to supervise; failure to state a claim for negligence; failure to mitigate; and ratification.

RELIEF REQUESTED

Claimant requested an award compensatory damages in the amount of \$233,012; damages for losses in the account of Michele Klauzens-Gausselin; compensatory damages in an amount representing the excessive commissions; punitive damages in an amount to be determined by the panel of arbitrators; pre- and post- award interest at a reasonable rate from the dates of investment; and costs of arbitration and expenses, including reasonable attorneys' fees, consulting fees, expert witness fees, and other costs deemed reasonable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Claimant Michele Klaucens-Gausselin did not execute a submission to arbitration, but did appear at the hearing session conducted on March 1, 1995 and agreed to be bound by the determination of the arbitrators on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. 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. The claims asserted in this matter shall be and hereby are dismissed in their entirety. Claimants shall take nothing.
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were sessions 6 (six) x \$750 = \$4,500 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimants Norbert and Elke M. Klaucens. Claimants have a credit of \$300 on deposit with the NASD which will be applied to the balance due for forum fees. Claimants Norbert and Elke M. Klaucens shall be and hereby are liable for and shall pay to the NASD the sum of \$1,200 and Respondents Ernst & Company and Paul Mohling shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$2,250 as the balance due for forum fees.

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

Dated:

/s/ Joseph P. Yaney, J.D., PhD

Joseph P. Yaney, J.D., PhD
Public Arbitrator, Presiding Chair

June 15, 1995

/s/ Quinton F. Seamons, Esq.

Quinton F. Seamons, Esq.
Public Arbitrator

June 28, 1995

/s/ Ralph Pierce

Ralph Pierce
Industry Arbitrator

June 20, 1995