

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James J. and Margaret T. McGarrity

94-00112

Name of Respondents

Robert Todd Financial Corporation
Robert Fallah
Mitchell P. Conlon

REPRESENTATION

Claimants James J. and Margaret T. McGarrity ("Claimants") were represented by J. Jerome Olitt, Senior Arbitration Specialist and House Counsel for Arbitrator and Mediation Specialists, Inc.

Respondent Robert Todd Financial Corporation ("Robert Todd") was represented by Edward Curtin, Esq. during the pleadings; however, because Robert Todd is no longer in business, it was not represented at the hearing.

Respondent Robert Fallah ("Fallah") was represented by Edward Curtin, Esq. of the law firm of Gersten, Savage, Kaplowitz and Curtin.

Respondent Mitchell P. Conlon ("Conlon") was represented by Roger J. Schwarz, Attorney at Law.

CASE INFORMATION

Claimants' Submission Agreement was signed on December 30, 1993.
Claimants' Statement of Claim was filed January 10, 1994.

Respondent Robert Todd signed its Submission Agreement on May 19, 1994. Respondent Robert Fallah signed his Submission Agreement on May 19, 1994. Respondents Robert Todd and Fallah filed a Joint Statement of Answer and Motion to Dismiss on May 5, 1994.

Respondent Conlon signed his Submission Agreement on April 28, 1994. Respondent Conlon filed his Statement of Answer on May 2, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:

April 19, 1995	-	2 sessions
April 20, 1995	-	2 sessions
April 21, 1995	-	2 sessions
May 8, 1995	-	one session
May 10, 1995	-	one session

Hearing Location: NASD Arbitration Office, New York, New York.

CASE SUMMARY

Claimants alleged, among other things, that they apprised Conlon that their stated investment goals and objectives were to avoid undue risk and emphasize growth through capital appreciation. Claimants alleged that Conlon failed to follow their stated investment objective. Claimants stated that an initial \$25,000 was given to Respondents to open Managed Brokerage Account Numbered 712-05438 ("Managed Account"). Claimants stated a second \$25,000 became the subject matter of a private placement venture capital investment in a private company called QTV Communications Corp. ("QTV"). Claimants alleged that the Managed Account was maintained and traded in a speculative, excessive and improper manner that did not meet Claimants' profile and stated objectives. Claimants alleged that Conlon made material misrepresentations to induce Claimants to purchase QTV. Claimants alleged Conlon made certain guarantees regarding the QTV investment. Claimants alleged that the investment strategy employed by Conlon was unsuitable, that the trading in the managed account was excessive, and that Respondent committed fraud, misrepresentation and deceit. Claimants alleged that Respondents breached their fiduciary, regulatory and supervisory obligations and that they breach their implied covenant of good faith and fair dealing.

Respondents denied all allegations of wrongdoing whether or not specifically denied hereunder. Respondent Fallah maintained that he is not personally liable to the Claimants. Fallah maintained that he had no personal knowledge of or communication with Claimants. Respondent Robert Todd maintained that Claimants incorrectly named it as a Respondent when the correct entity was Robert Todd Capital Group ("RTCG").

Respondents Fallah, Robert Todd and Conlon (hereinafter referred to as "Respondents") maintained that as to the managed account, the nature of the account had been fully disclosed and that Claimants knew that RTCG had unlimited discretionary authority. Respondents maintained that Claimants made an informed investment decision and are not entitled to recover their losses. Respondents maintained, that as to the QTV investment, the investment had been thoroughly explained to Claimants by Conlon and that Claimants were aware that QTV was a speculative investment. Respondents maintained that Claimants losses are attributable to market conditions and their own investment decisions. Respondent Conlon maintained that he never violated any duty or obligation owed to them. Respondent Conlon maintained that he did not make material misrepresentations to Claimants nor did he guarantee performance of any investment.

RELIEF REQUESTED

Claimants requested, in their pleading, monetary damages in the approximate amount of \$45,000 together with margin interest, commissions, mark ups (if any) filing fees and costs.

Respondents Robert Todd and Fallah requested that the claims against them be dismissed.

Respondent Conlon requested that an award be entered in his favor, dismissing the Claimants' claim.

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 original(s) remain on file with the NASD.

The Panel is aware that Robert Todd is out of business and did not appear at the hearing. The Panel has determined that pursuant to Section 12 of the Code of Arbitration Procedure it will exercise its jurisdiction over Robert Todd.

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. Respondents Robert Todd Financial Corp. and Robert Fallah are hereby jointly and severally liable and shall pay to Claimants the sum of \$20,000.00; no interest is awarded on this amount.
2. Respondent Mitchell P. Conlon is liable and shall pay to Claimants the sum of \$5,000.00; no interest is awarded on this amount.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

8 hearing sessions X \$400 = \$3,200

Each party is assessed one third of the forum fees and shall make payments as follows:

Claimants in the amount of \$1,067; however, Claimants are entitled to offset this amount with their hearing session deposit of \$400 so that the amount due from the Claimants is \$667.

Respondent Robert Fallah in the amount of \$1067; and

Respondent Mitchell P. Conlon in the amount of \$1067.

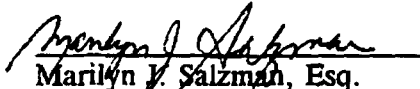
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Fees are payable to the National Association of Securities Dealers, Inc.


Concurring Arbitrators' Signatures

Name


Public/Industry


Marilyn V. Salzman, Esq.

Public Chairperson


Edward M. Miller, Ph.D

Public Panelist


Thomas A. Turley

Industry Panelist

NASD Date of Decision: May 11, 1995

STATE OF: New York
COUNTY OF: New York

S.S.:

On this ^{11TH} ~~10TH~~ day of May, 1995, before me personally appeared **Thomas A. Turley** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

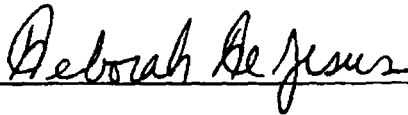
ANDREW RUSSELL
Notary Public, State of New York
No. 02RU5034752
Qualified in New York County
Commission Expires Oct. 17, 1996

Andrew Russell

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 10th day of May, 1995, before me personally appeared **Edward M. Miller** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County 96
Commission Expires January 24, 19

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

CHARLES W. CHEVALLEY and
LEILA M. CHEVALLEY,

Claimants,

v.

NASD No. 94-114

GLENFED BROKERAGE SERVICES,
W. TRENT GIEHLER and
GLENDALE FEDERAL BANK,

Respondents.

Representation

For Claimant: Jeffrey D. Classon, Esq., of Christensen, Bacigalupi & Barrus, Fresno, California

For Respondents: Joel Dwork, Esq., of Howard Everakes & Associates, Glendale, California

Case Information

Statement of Claim filed: January 7, 1994

Claimants' Submission Agreement signed: November 8, 1993

Statement of Answer filed on: April 13, 1994

Respondents' Submission Agreement signed on: Glendale Federal Bank and GlenFed Brokerage Services on April 13, 1994 and W. Trent Giehler on May 18, 1994

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: February 8, 1995

Hearing Location: San Francisco, California

Case Summary

Claimants alleged:

Misrepresentation, lack of suitability and lack of disclosure in the purchase of shares of GlenFed, Inc. (GFI). Claimants are husband and wife, 69 and 68 years of age, respectively. Neither has a college degree and Leila Chevalley did not graduate from high school. Charles Chevalley had been employed as a barber his entire life, while Ms. Chevalley had been a homemaker, and on occasion a domestic.

Claimants had maintained checking and brokerage accounts with Guarantee Savings and Glendale Federal Bank for more than 20 years. In 1990 they received a brochure promoting the purchase of stock in the bank and thereafter met with Respondent W. Trent Giehler (Giehler) about the stock. He told Claimants that investing in GlenFed bank stock was safe, was insured the same as a bank account, would yield approximately 14% annually and pay periodic dividends. No risks were covered and no background information was obtained on Claimants. Claimants thereafter invested their life savings, \$17,000, in GFI. The stock was subsequently restructured and worth \$680 as of approximately June of 1993.

Respondents denied each and every allegation of wrongdoing in the Claim and alleged:

The purchase of GFI was unsolicited and initiated by Claimants. No brochure soliciting the purchase of GFI was prepared by any Respondent. The purchase was a discount brokerage transaction on which the broker made no commission. Giehler made no comments indicating the stock was insured and even advised Claimants the price had been declining. The corporate reorganization of Glendale Federal Bank had nothing to do with GlenFed Brokerage Services, which was not involved in the reorganization or the voting that took place.

Relief Requested

Claimant requested:

1. Rescission or compensatory damages of \$17,000;
2. Interest, less the dividend received of \$300;

3. Costs;
4. Attorney's fees;
5. Punitive damages

Other Issues Considered and 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.

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. Respondents and each of them shall, jointly and severally, pay to Claimants \$17,109, less \$300 received as dividend, less \$706 received from the sale of the stock, or \$16,103.

The \$16,103 shall be reduced to \$8,103, due to Claimants' failure to mitigate their damages. This calculation is arrived at by subtracting from \$16,103 the sum of \$8,000, the value of Claimants' investment measured on June 26, 1992.

Claimants are entitled to the interest they would have received from a time certificate at the bank. Accordingly, they are awarded 6.017% on the principal sum of \$17,000, from October 9, 1990 through June 26, 1992, or \$1,751.52 (625 days x \$2.80 per day = \$1,751.52).

Total Judgement: \$9,854.52.

2. The claim for punitive damages is dismissed:
3. Each party shall bear their own attorney's fees and costs of suit.

Findings

Respondent GlenFed Brokerage, through its agent respondent Trent Giehler, had a fiduciary obligation to Claimants to make an inquiry, preliminary to executing the stock transaction, that the proposed purchase was suitable.

Had they done so, a cursory inquiry by Giehler would have revealed Claimants' utter lack of financial sophistication and inability to withstand any loss of capital.

Additionally, Giehler knew Claimants were bank customers. This should have raised a "red flag" and prompted an inquiry as to how they came to see him, why they wanted to buy shares in the bank, the source of their money, their knowledge of stock volatility, and ability to withstand potential loss.

Respondents GlenFed Brokerage and Trent Giehler breached their fiduciary obligation to Claimants by not making such inquiries and not disclosing to Claimants the risks of a stock purchase in general and the bank in particular. Consequently, they are liable to Claimants for damages suffered thereby.

Respondent Glendale Federal Bank also had an obligation to Claimants as banking customers. That obligation consisted of safeguarding Claimants' bank deposits.

When the bank advertised and solicited Claimants to utilize its "affiliated" brokerage service, coincidental with the maturity of their time certificate, they used confidential customer information to gain a competitive advantage. This advertising was positioned at a time when customers, such as Claimants, were particularly vulnerable to such advertising, i.e. they had matured, unencumbered money in their bank savings account.

In making their recommendation to utilize its brokerage service, the bank also assumed the responsibility to see to it that the brokerage service they were recommending, would fully inform the bank customers of the consequences of not keeping their money in the bank; inform customers of the risks of an investment outside the bank; and, to insure that preliminary inquiries were made about the suitability of any contemplated investment.

The bank exercised no supervision or control over the "affiliated" brokerage service they had recommended. Consequently, the bank shared in any damages suffered by Claimants to the same extent as GlenFed Brokerage and Trent Giehler.

Claimants on the other hand, had a duty to set diligently to mitigate their damages when they discovered they had been injured. GlenFed, Inc., stock was publicly traded on the New York Stock Exchange. Information on the stock was readily available through a variety of sources including valuations contained in monthly statements sent to them by GlenFed Brokerage. From the time of purchase the stock declined in value. Despite this information, Claimants did not act to mitigate their damages until the day before the hearing, February 7, 1995, when the stock was sold for \$706.

Although common wisdom dictates that stock will fluctuate in value, as of June 26, 1992, it would have been reasonable to conclude endemic problems existed with the investment warranting a sale of the shares. The value of the investment on that date was \$8,000.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$300 hearing session deposit previously paid by the Claimants. Additional Forum fees are assessed against:

Respondents jointly and severally for \$300

calculated as follows: two hearing sessions at \$300/hearing session, equals \$600, assessed equally between Claimants and Respondents.

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

Arbitration Panel

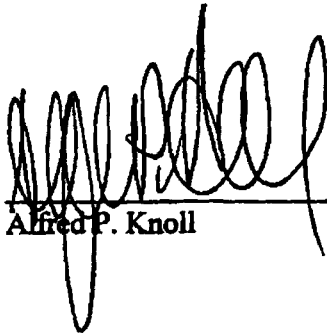
Name

Alfred P. Knoll

Public/Industry

Public

Concurring Arbitrator Signature


A handwritten signature in black ink, appearing to read 'Alfred P. Knoll', is written over a horizontal line. The signature is stylized with loops and flourishes.

Date of Decision:

2/27/95

Date Served: 02/28/95