

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Harold I. Rosen

94-00792

Name of Respondents

F.N. Wolf & Co., Inc.
James Scullen

REPRESENTATION

Claimant Harold I. Rosen ("Rosen") appeared at the hearing pro se. Claimant Rosen is an attorney with the firm of Seltzer and Rosen, P.C., of Washington, D.C.

Respondent F. N. Wolf & Co., Inc. ("F. N. Wolf") did not appear at the hearing. (See "Other Issues").

Respondent James Scullen ("Scullen") was represented by Stephen W. Comiskey, Esq. of Comiskey & Hunt, of McLean, Virginia.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimant Rosen on March 1, 1994. The Uniform Submission Agreement was signed by Rosen on February 25, 1994.

A joint Statement of Answer was filed by Respondents F. N. Wolf and Scullen on May 10, 1994. A Uniform Submission Agreement was signed by John S. Barr, Esq. on behalf of F. N. Wolf on May 10, 1994. A Uniform Submission Agreement was signed by Scullen on May 6, 1994.

HEARING INFORMATION

The hearing was held on February 15, 1995, at the NASD District No. 9 Office in Washington, D.C. for a total of one (1) hearing session.

CASE SUMMARY

Claimant Rosen alleged in his Statement of Claim that he maintained two accounts with Respondents F. N. Wolf and Scullen during the period from 1989 through 1993, one of which was an IRA account. Claimant stated that he also maintained an IRA account with another broker-dealer. Claimant alleged that in July 1989, Respondent Scullen recommended that Claimant transfer IRA funds from the other broker-dealer into his IRA account at F. N. Wolf in order to purchase shares of Martinez & Murphey and Mascott Corp. Claimant alleged that Respondent Scullen recommended both stocks as sure winners, that the investments would appreciate substantially in value, that Mascott Corp. was the best stock Scullen had seen in many years, and that Claimant would become very rich. On July 25, 1989 Claimant authorized the purchase of 6,950 shares of Martinez & Murphey, and on July 26, 1989 the purchase of 25,000 share of Mascott Corp. In August 1989, Claimant alleged that Scullen recommended the purchase of additional shares of Mascott Corp. Claimant authorized the purchase of 15,000 additional shares of Mascott Corp. on July 26, 1989, which was paid for by an additional transfer of funds. Claimant further alleged that in June of 1990 after the IRA account had appreciated in value from \$120,000 to approximately \$200,000, Claimant suggested to Respondent Scullen that the appreciated stocks be sold, but that Scullen advised against such a sale. Claimant alleged that Scullen also requested that Claimant sign a letter, which Scullen dictated to Rosen over the telephone, stating that Claimant understood the inherent investment risks associated with the types of stocks being purchased in the IRA account. Claimant stated that on June 18, 1990, he signed the letter upon Scullen's representation that it was an F. N. Wolf home office requirement, but Claimant stated that he did not understand the risks involved, nor did Respondent Scullen explain them to Claimant. At that time, Claimant alleged, Respondent Scullen also recommended the purchase of Markistar stock, stating that it was a tremendous investment and that it would substantially appreciate in value. Based on Scullen's representations, Claimant authorized the purchase of 40,000 shares of Markistar on June 21, 1990. Claimant further alleged that Respondent Scullen never made sell recommendations, but rather advised Claimant to hold onto the stocks. Claimant stated that by the end of 1990, the \$152,024 of purchases made in the IRA account had a total value of \$67,602, and that he asked Scullen about the stocks, and was continually told not to worry because the stocks were sure to appreciate. Claimant stated that he authorized the sale of 40,000 share of Markistar on August 5, 1993, 7,500 shares of Mascott Corp. on September 28, 1993, and 32,500 shares of Mascott Corp. on December 31, 1993. Claimant alleged that Scullen's actions show a pattern of misrepresentations, fraudulent inducements, and abusive sales tactics, that resulted in a loss to Claimant of \$114,016.60, representing 75% of the original \$152,006 in purchases. The activity in Claimant's IRA account which is the basis of the Statement of Claim consisted of the four purchases and three sales noted above involving the following three stocks: Martinez & Murphey, Mascott Corp., and Markistar.

Respondents F. N. Wolf and Scullen in their joint Answer requested that the Statement of Claim be dismissed. Respondents stated that in June 1990 Claimant provided a letter for his account records dated June 18, 1990, in which he affirmed his understanding of the risk associated with his investments. Respondents stated that Claimant, an attorney, is an intelligent person with investment

experience with several other brokerage firms, and had independent sources of investment advice at all times. Respondents assert that Respondent Scullen informed Claimant of the full range of investment services offered by F. N. Wolf, including the more conservative ones. Respondents claim that Claimant declined to invest in the more conservative investments. Respondents stated that Respondent Scullen explained fully to Claimant the nature and risks of each investment, provided Claimant with an initial and final prospectus for Mascott Corp., an initial public offering, and provided Claimant with monthly account statements. Respondents further asserted that Claimant's account losses resulted from his own actions in that Claimant made an untimely order to sell one stock against the advice of Scullen, and that Claimant failed to take advantage of profit positions in two out of his three stocks for reasons totally outside the control of Respondents.

Respondents set forth the following affirmative defenses in their Answer: Claimant knowingly accepted and ratified the transactions; the Claimant's claims are barred by the applicable statute of limitations; and any reliance on alleged assurances that Claimant's stock was a sure winner would have been contradicted by written materials in Claimant's possession, thus any such reliance would have been unreasonable and would bar any recovery for fraud.

RELIEF REQUESTED

Claimant requested damages in the amount of \$100,000 plus punitive damages, and such other relief as may be deemed just and proper.

Respondents requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

On December 15, 1994, Respondent F. N. Wolf filed a voluntary petition for relief pursuant to Chapter 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court for the Southern District of New York. On January 19, 1995, the Court lifted the stay with respect to employees of Respondent F. N. Wolf. Therefore, this arbitration proceeding was stayed as to Respondent F. N. Wolf, and the hearing in this matter proceeded as to Respondent Scullen, individually.

At the start of the hearing, Respondent Scullen filed the following motions: Motion to Dismiss for failure to state a claim upon which relief can be granted; Motion to Dismiss based on the applicable statute of limitations; and Motion to Dismiss for failure to join an indispensable party. The panel, after holding an executive session, decided to hear the testimony of Claimant Rosen prior to ruling upon the various motions. After hearing testimony, the panel held an executive session, and decided to adjourn the hearing to further consider the outstanding motions. Claimant Rosen filed a response to Respondent Scullen's motions, and also filed a Motion for a ruling on the admissibility of evidence. The panel accepted Claimant's filing. After due consideration, the Panel decided to grant Respondent Scullen's Motion to Dismiss based on the applicable statute of limitations. The other motions were

therefore rendered moot.

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also 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. Respondent James Scullen's Motion to Dismiss based on the applicable statute of limitations is granted. Section 15 of the NASD Code of Arbitration Procedure ("the Code") shall not extend applicable statutes of limitations. Therefore, the Statement of Claim filed by Claimant Harold I. Rosen, is denied and dismissed in its entirety.
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
3. Any relief not specifically provided for herein is denied.

FORUM FEES

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

1 hearing session x \$500 = \$500.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150, and the hearing session deposit in the amount of \$500 previously paid to the NASD by Claimant.

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

By The Arbitration Panel:

Dated:

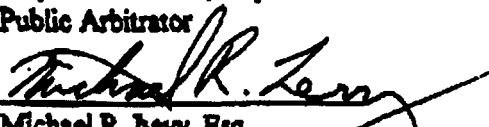
3/8/95

Sharon T. Nelson
Sharon T. Nelson, Esq., Presiding
Public Arbitrator

Rosen Award
Case Number 94-00792
Page 6

3/8/95

Stephen E. Crable, Esq.
Public Arbitrator


Michael R. Levy, Esq.
Industry Arbitrator

Date Award Served By the NASD: March 8, 1995

Robert Award
Case Number 94-00792
Page 5

3/9/95



Stephen H. Crable, Esq.
Public Arbitrator

Michael R. Levy, Esq.
Industry Arbitrator

Date Award Served By the NASD: March 3, 1995