

N.A.S.D. AWARD..

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Gunter Ullmann
Ilse Ullmann
Gunter and Ilse Ullmann as trustees
of the Gunter & Ilse Ullmann Trust

NASD Arbitration
No. 94-01429

Name of Respondent(s)

Hugh Philip Gee, Terrence Gee
Gee Asset Management, Inc. and
Hugh Gee & Co.

REPRESENTATION

For Claimants: Steven L. Weinstein, Esq. and Gregory J. Hampton,
Esq., San Francisco, California

For Respondents: Jerome Berg, Esq., San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 13, 1994

Claimants' Submission Agreements signed as follows:

Gunter Ullmann and Ilse Ullmann, Individually: April 11, 1994

Gunter Ullmann and Ilse Ullmann, Trustees: July 6, 1994

Joint Statement of Answer filed by Respondents: September 2, 1994

Respondent Hugh Philip Gee's Submission Agreement signed: August
22, 1994

Respondents Terrence Gee, Gee Asset Management, Inc. and Hugh Gee
& Co. did not file Submission Agreements. However, they are

subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

June 8, 1995 (one session)

Hearing Date(s)/Session(s): July 10, 1995 (two sessions)

July 11, 1995 (two sessions)

July 12, 1995 (two sessions)

Hearing Location:

San Francisco, California

CASE SUMMARY

Claimants alleged that during Respondents' course of dealing with Claimants, Respondent Hugh Gee did not seek timely disclosure of essential facts about Claimants' financial condition or make a determination that the transactions executed by Respondents in Claimants' securities account were suitable for Claimants. Claimants further alleged that although Hugh Gee was aware of Claimants' ages and that they were seeking retirement income, he failed to tell Claimants that the Contrapunto Strategy was highly speculative and unsuitable for their investment objectives or that the past results of this strategy were not necessarily indicative of future returns and further alleged that Hugh Gee failed to tell Claimants about the risks of short selling. Claimants also asserted the following causes of action with respect to their investments: 1) Fraud and deceit in violation of 15 U.S.C. Section 78j(b) (Securities Exchange Act of 1934, Section 10(b)) and Rule 10b-5 of the Securities Exchange Commission; 15 U.S.C. Section 77q(a) (Securities Exchange Act of 1934, Section 17(a)); and 15 U.S.C. Section 78o(c)(1) (Securities Exchange Act of 1934, Section 15(c)(1)); 2) Fraudulent, deceptive and manipulative acts in obtaining and managing Claimants' account and in transactions, acts, practices and a course of business dealing with Claimants in violation of 15 U.S.C. Section 80b-6 (Investment Advisors Act of 1940 Section 206) for which Claimants demand pursuant to 15 U.S.C. Section 80b-15 (Investment Advisors Act of 1940 Section 215) rescission of the Investment Advisory Agreement (IAA) and return of the \$23,622.00 in IAA fees paid to Respondent Gee Asset Management;

3) Intentional misrepresentation in securities transactions in violation of California Corporate Code Sections 25401 and 25501; 4) Fraud by an investment advisor in violation of California Corporate Code Section 25235; 5) Fraud and deceit in violation of California Civil Code Sections 1572, 1709 and 1710; 6) Breach of contract by not fully crediting brokerage commissions against the asset management fee; 7) Breach of fiduciary duty; and 8) Violation of New York Stock Exchange, Inc. Rule 405 (know your customer rule).

Respondents denied Claimants' alleged causes of action and further denied that Claimants were damaged as alleged in the Statement of Claim. Respondents alleged that Mr. Ullmann has progressively exaggerated his claim and asserted the following affirmative defenses: 1) The Statement of Claim, including all causes of action and each of them, fails to state facts sufficient to constitute a claim for relief against Respondents Hugh Philip Gee, Terrence Gee, Gee Asset Management, Inc. and Hugh Gee & Co.; 2) The Statement of Claim, including all causes of action, does not entitle Claimants to relief; 3) the Statement of Claim, including all causes of action does not entitle Claimants to relief because Respondents at all times acted in good faith; 4) The Statement of Claim, including all causes of action, does not entitle Claimants to relief because Claimants have failed to properly mitigate damages; and 5) Claimants fail to state a claim on which exemplary damages can be granted.

RELIEF REQUESTED

Claimants requested:

1. Principal losses of \$141,840.00 in Claimants' account which includes \$45,320.00 in brokerage commissions paid from the account to Respondent Hugh Gee & Co.;

2. Earnings losses of \$48,112.00 which is the total amount of compound interest Claimants could have earned by investing in risk free U.S. Treasury Bills paying an average annual interest of 5.00% during (a) the 34 1/2 month period from February 1, 1990 until December 15, 1992 on the initial deposits of \$145,737.00 that were made on or before February 6, 1990, (b) the 29 1/2 month period from June 1, 1990 until December 15, 1992 on the deposits that were made on June 6 and June 13, 1990 of \$181,521.00 and (c) the 28 month period from August 17, 1990 until December 15, 1992 on the deposit of \$20,074.00 that was made on

August 17, 1990.

3. Management fees of \$23,622.00 including fees of \$3,769.00 that were not offset by brokerage commissions paid to Respondent Hugh Gee & Co.; and
4. Punitive damages.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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, the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimants the sum of \$12,408.25 in satisfaction of Claimants' claims.
2. Claimants' claim for punitive damages is denied.
3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are to be split between the parties and are calculated as follows:

One pre-hearing session @ \$300.00/session	=	\$ 300.00
Six hearing sessions @ \$750.00/session	=	<u>\$4,500.00</u>
Total fees assessed	=	\$4,800.00

Claimants' share, jointly and severally (50%)	=	\$2,400.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$1,650.00

Respondents' share, jointly and severally (50%)	=	\$2,400.00
Balance due	=	\$2,400.00

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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Robert L. Liu, Esq.	Public Arbitrator
Walter R. Tick, CPA	Public Arbitrator
Allan B. Currie, LLM	Industry Arbitrator

Concurring Arbitrators' Signatures

Robert L. Liu, Esq.

Walter R. Tick, CPA



Allan B. Currie, LLM

Date of Decision: 8/11/95

Date Served: 08/21/95