

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Wanda Jo Gardner

and

94-01900

Name of Respondent

Cullom & Sandow Securities, Inc.
Thomas Timothy Cullom
Richard Wells
Richard L. Sandow

REPRESENTATION OF PARTIES

Wanda Jo Gardner ("Claimant") was represented by Jonathan Pace, Esq., Pace & Rickey, Dallas, Texas.

Cullom & Sandow Securities, Inc. ("Respondent Cullom & Sandow"); Thomas Timothy Cullom ("Respondent Cullom"); Richard Wells ("Respondent Wells"); and Richard L. Sandow ("Respondent Sandow")(collectively as "Respondents") were represented by Ben L. Krage, Esq., Kasmir & Krage, L.L.P., Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about May 19, 1994. Submission Agreement of Claimant Wanda Jo Gardner was signed on May 16, 1994.

Statement of Answer was filed by Respondents Cullom & Sandow Securities, Inc.; Thomas Timothy Cullom; Richard Wells; and Richard L. Sandow on or about August 24, 1994. Submission Agreement of Respondent Cullom & Sandow Securities, Inc. was signed on August 22, 1994 by Richard L. Sandow. Submission Agreement of Respondent Thomas Timothy Cullom was signed on August 22, 1994. Submission Agreement of Respondent Richard Wells was signed on August 17, 1994. Submission Agreement of Respondent Richard L. Sandow was signed on August 22, 1994.

HEARING INFORMATION

The hearing was held on Tuesday, March 21, 1995 for two (2) sessions and Wednesday, March 22, 1995 for one (1) session in Dallas, Texas for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that Respondent Wells engaged in churning, made unsuitable transactions in her account. It was alleged that these actions constituted fraud, breach of fiduciary duty, violation of state and federal securities laws, violation of RICO, and violation of the Texas Deceptive Trade Practices Act ("DTPA"). Specifically, Claimant alleged that:

- in response to the representations of Respondent Wells, she opened an account at Cullom & Sandow.
- beginning in June, 1991, Respondent Wells began investing in speculative securities and puts and calls.
- during the six months of heavy trading activity in her IRA account, \$108,781 worth of securities were purchased with equity of \$24,400.

Claimant also alleged that Respondents Cullom & Sandow Securities, Inc., Cullom and Sandow failed to properly supervise Respondent Wells and devised a compensation structure designed to entice registered representatives to generate trading activity and commissions.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the account in question was not a discretionary account or a managed account controlled by them. Respondents stated that each of the trades in the Claimant's account was specifically authorized by her after consultation with Respondent Wells. Respondents further stated that Claimant solicited Respondent Wells to invest money that she informed him that she could afford to lose. Respondents also stated that Claimant was aware of the risks of option trading and desired to trade options.

RELIEF REQUESTED

Claimant requested an award from all Respondents jointly and severally in the following amounts:

- ◆ \$23,800 to reimburse her for the losses that occurred in her accounts from speculative trading and from the churning of her account, plus an amount equal to 6 percent per annum as a return on such sum from the time the Claimant invested her funds with Respondents until the date of the award;

- ♦ \$47,600 to treble Claimant's losses provided by RICO;
- ♦ \$70,400 to provide appropriate sums provided for recovery of violations of the DTPA;
- ♦ interest at the legal rate from the date of the award until Claimant receives payment;
- ♦ a sum to reimburse Claimant for attorneys' fees and expenses; and
- ♦ such other awards as the arbitrators consider proper.

Claimant requested an award from Respondent **Cullom & Sandow Securities, Inc.** in the amount of at least \$50,000 as punitive damages for the egregious fraud it permitted by its disregard of the rules and regulations governing its responsibilities to protect customers.

Claimant requested an award from Respondent **Wells** in the amount of at least an additional \$25,000 as punitive damages for the egregious fraud he visited upon the Claimant.

Claimant requested an award from Respondent **Cullom** in the amount of at least an additional \$50,000 as punitive damages for failing to supervise Respondent Wells and for establishing a compensation policy to attract high volume brokers without providing the means to adequately supervise their efforts.

Claimant requested an award from Respondent **Sandow** in the amount of at least an additional \$50,000 as punitive damages for failing to supervise Respondent Wells and for establishing a compensation policy to attract high volume brokers without providing the means to adequately supervise their efforts.

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 at the commencement of the hearing advised the panel that she voluntarily dismissed the claims asserted against Respondent **Thomas Timothy Cullom**.

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. Respondents **Cullom & Sandow Securities, Inc.** and **Richard Wells** shall be and hereby are jointly and severally liable for and shall pay to the Claimant Wanda Jo Gardner the sum of **Twenty two thousand two hundred fifty five dollars (\$22,255)**.
1. Respondents **Cullom & Sandow Securities, Inc.** and **Richard Wells** shall be and hereby are jointly and severally liable for and shall pay to the Claimant Wanda Jo Gardner the sum of **Twenty thousand dollars (\$20,000)** as punitive damages. In making this award of punitive damages the undersigned arbitrators have considered the hearing briefs submitted by the parties.
1. Respondents **Cullom & Sandow Securities, Inc.** and **Richard Wells** shall be and hereby are jointly and severally liable for and shall pay to the Claimant Wanda Jo Gardner the sum of **Seven thousand five hundred dollars (\$7,500)** as attorneys' fees. In making this award of attorneys' fees, the undersigned arbitrators have considered the briefs submitted by the parties.
1. Respondents **Cullom & Sandow Securities, Inc.** and **Richard Wells** shall be and hereby are jointly and severally liable for and shall pay to the Claimant Wanda Jo Gardner the sum of **Seven hundred fifty dollars (\$750)** as reimbursement of the hearing session deposit previously paid to the NASD by the Claimant.
1. The claims asserted against **Richard L. Sandow**, individually, shall be and hereby are dismissed.
1. Each party shall bear its own costs, expenses and attorneys' 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 **three (3) sessions x \$750 = \$2,250** 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 Claimant **Wanda Jo Gardner**. Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall retain the surcharge in the amount of \$200 paid to the NASD by Respondent **Cullom & Sandow Securities, Inc.** Respondent **Cullom & Sandow Securities, Inc.** shall be and hereby is liable for and shall pay to the NASD the sum of **\$1,500** as the balance due for forum fees. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Douglas F. Pierce, Esq.

Douglas F. Pierce, Esq.

Public Arbitrator, Presiding Chair

April 10, 1995

/s/ Winston C. Fournier

Winston C. Fournier

Public Arbitrator

April 13, 1995

/s/ Chester E. Young

Chester E. Young

Industry Arbitrator

April 11, 1994