

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

Badidokht Bahadori

Claimant,

v.

No. 95-0267

Wesley Hayne, Kevin Miller,  
Chris Farni, Hayne Miller & Farni,  
GDN Securities, Ltd., Kevin Miller

Respondent.

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**REPRESENTATION OF PARTIES**

Claimant Badidokht Bahadori was represented by Rebecca Bender, Esq. of Minneapolis, MN.

Respondent GDN Securities, LTD. and Kevin Miller and Hayne, Miller & Farni, Inc. was represented by Robert D. Maher of Best & Flannagan located in Minneapolis, MN.

Respondent Chris Farni was represented by Jan Stuurmans, Esq. located in Minneapolis, MN.

Respondent William Milkes was represented by Kevin Hoffman, Esq. of Jacobsen Harwood Brill & Bennett, P.A. located in Minneapolis, MN.

Respondent Wesley Hayne was represented by Gregory Stanmoe, Esq. of Briggs and Morgan located in Minneapolis, MN.

**CASE INFORMATION**

Statement of Claim was filed by Claimant Badidokht Bahadori ("Claimant") on or about January 17, 1995.

Claimant's Submission Agreement signed on January 3, 1995 by LeDan Axdahl, with power of attorney for Badidokht Bahadori.

Statement of Answer was filed by Respondents Kevin Miller and Hayne, Miller & Farni ("Respondents Miller and HMF") on or about March 14, 1995.

Respondent HMF's Submission Agreement was signed on March 14, 1995 by its president Kevin Miller.

Respondent Miller's Submission Agreement was signed on or about March 14, 1995.

Statement of Answer was filed by Respondent Chris Farni ("Respondent Farni") on or about February 27, 1995.

Respondent Farni's Submission Agreement was signed on February 13, 1995.

Statement of Answer was filed by Respondent William Milkes ("Respondent Milkes") on or about April 19, 1995.

Respondent Milkes' Submission Agreement was signed on March 14, 1995.

Statement of Answer was filed by Wesley Hayne ("Respondent Hayne") on or about September 18, 1995.

The NASD has no record of Respondent Hayne having filed a Uniform Submission Agreement.

Statement of Answer/Request for dismissal was filed by GDN Securities ("Respondent GDN") on or about August 18, 1995.

The NASD has no record of Respondent GDN having filed a Uniform Submission Agreement.

#### **HEARING INFORMATION**

Pre-Hearing conference dates were February 6, 1996 for one (1) session.

Hearing dates were April 9, 1996 for two (2) sessions, April 10, 1996 for two (2) session and April 11, 1996 for two (2) sessions.

Hearing Location was Minneapolis, MN.

#### **CASE SUMMARY**

Claimant, alleged that her broker Respondent Milkes converted her entire account into high risk stocks in a series of unauthorized transactions. Some of the unsuitable stocks included Implant Technology, Opti-Mag Substrate, Apogee Robotics, Yukon, Advance

Display Technologies and Smart Car. The Claim included causes of action as follows: Breach of contract and NYSE know your customer rule; violation of Minn. Stat. Section 325F.68, et. seq., common law fraud, negligent misrepresentation and supervision; breach of fiduciary duty against Respondent Milkes; liability against respondents under respondeat superior.

Respondent Milkes alleged that no basis existed for Claimant's request for relief. He alleged that Claimant had no special relationship with him and that she worked through her niece LeDan Axdahl, a sophisticated international business woman. Respondent Milkes stated that Ms. Axdahl controlled Claimant's account through the power of attorney and approved all transactions in the account.

Respondent Farni alleged that he had no knowledge or information regarding any aspect of the Statement of Claim by Claimant. He further alleged that he had no knowledge of the account or any duties whatsoever regarding the account at any time.

Respondents Miller and HMF denied that introductory facts as alleged in Claimant's Statement of Claim. Respondents further alleged that broker Respondent Milkes followed the stated investment objectives of the Claimant and that Claimant's niece authorized the transactions. Respondents also brought affirmative defenses including failure to state a claim on which relief may be granted and that Claimant's losses, if any, were caused by market forces beyond the control of Respondents.

Respondent GDN alleged that it was not required to submit to arbitration because the Claimant was not and had never been a customer of GDN. Respondent also alleged that it was not a successor in interest of Respondent HMF, or any of its predecessors or related entities.

Respondent Hayne denied any wrongdoing of his behalf relating to any and all counts. He further alleged that he never had any personal contact with the Claimant and that all matters relating to Claimant were handled by the compliance department.

#### **RELIEF REQUESTED**

Claimant's requests included the following; \$102,000.00 in actual damages, market adjusted damages; twice the amount Claimant paid Respondents as commissions; punitive damages; attorneys fees; pre-judgment interest; post judgment interest, costs, filing and hearing session fees and other disbursements; and further relief as the tribunal deems just. Claimant also requested a disciplinary referral of all Respondents.

Respondent Milkes requested that the Statement of Claim and the requests for relief fail. Respondent Farni requested that Claimant's Claim against him be denied in its entirety. Respondents Miller and HMF requested that Claimant recover nothing, that its Statement of Claim be dismissed with prejudice, and that Respondents be awarded their costs and reasonable attorneys' fees herein, and that the panel award such other relief as it may deem proper. Respondent Hayne requested that he not be held responsible for Claimant's alleged losses. Respondent GDN requested that it be dismissed from the arbitration.

#### OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations on behalf of the Claimant, the panel has determined that Respondents had been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondents Hayne and Respondent GDN did not file with the NASD a properly executed submission to arbitration but both are required to submit to arbitration pursuant to Section 12 of the Code and having answered the claim, appeared and testified at the hearing, and having executed a written account agreement to arbitrate any dispute arising out of the relationship of the parties, is required to submit to arbitration and therefore is bound by the determination of the panel on all issues submitted.

Respondent GDN Securities brought a Motion to Dismiss prior to the hearing which was denied by the panel. Respondent Hayne brought a Motion to Dismiss at the beginning of the hearing that was denied by the panel.

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

(1). That respondents William Milkes, Wesley Hayne, Kevin Miller, Hayne Miller & Farni, and GDN Securities, Ltd. are jointly and severally liable for and shall pay to the Claimant \$100,622.00 in actual damages, and interest there on at the statutory rate beginning on March 25, 1990 until paid;

(2). That respondents William Milkes, Wesley Hayne, Kevin Miller, Hayne Miller & Farni, and GDN Securities, Ltd. are jointly and severally liable for and shall pay to the Claimant \$39,288.09 in attorneys fees, costs, and expert witness fees, plus interest at the statutory rate from the date of this award until paid;

(3). That other than forum fees which are addressed below, all other relief not specifically awarded are hereby denied.

### FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed: One (1) pre-hearing conference sessions x \$300.00 = \$300.00 and six (6) hearing sessions x \$750.00 = \$4,800.00 less the \$750.00 hearing session deposit previously paid for by Claimant for a total due the NASD of \$4050.00.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

The remaining forum fees in the amount of \$4,050.00 are jointly and severally assessed against respondents William Milkes, Wesley Hayne, Kevin Miller, Hayne Miller & Farni, and GDN Securities, Ltd. The respondents William Milkes, Wesley Hayne, Kevin Miller, Hayne Miller & Farni, and GDN Securities, Ltd. are also jointly and severally liable for and shall reimburse the Claimant for the hearing session deposit in the amount of \$750.00.

Pursuant to Section 45 of the Code, the Respondent GDN is liable for and shall pay its member surcharge in the amount of \$300.00.

Pursuant to Section 45 of the Code, the Respondent HMF is liable for and shall pay its member surcharge in the amount of \$300.00.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

7-23-96

/s/ Mark W. Biglow

Mark W. Biglow  
Presiding Chair  
Public Arbitrator

7-23-96

/s/ Howard Seesel, Jr.

Howard Seesel, Jr.  
Public Arbitrator

7-23-96

/s/ Fred Souba

Fred J. Souba  
Industry Arbitrator

Date of Service by the NASD: July 30, 1996