

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Gordon W. and Layne G. Carlson

95-00653

Name of Respondent

Hayne, Miller Financial, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about February 7, 1995, Gordon W. Carlson and Layne G. Carlson ("Claimants"), who appeared Pro Se, alleged that they were introduced by telephone to Michael Wheelock ("Wheelock"). Layne Carlson alleged that Wheelock told him that he was the best broker in the state and that he could guarantee to make him money and to make him a rich man. According to the Carlsons, Wheelock claimed to have a hot stock called Go-Video which he personally owned and that he could control the market for that stock. Claimants alleged that in subsequent conversations, Wheelock claimed he had another hot stock called United Buying Service which he also controlled. Throughout 1989 and 1990, Wheelock allegedly continued to tell Claimants he would make them rich and would guarantee a profit even while they complained of losses and questioned transactions. Claimants alleged that Wheelock's employer, Hayne, Miller & Swearingen, Inc. (later known as Hayne, Miller & Farni, Inc. and Hayne Miller Financial, Inc.) ("Hayne Miller"), represented by Robert D. Maher, Esq. of Best & Flanagan in Minneapolis, MN, knew or should have known about Wheelock's fraudulent conduct with customers including the Claimants. The Claimants asserted that Hayne Miller was negligent in permitting Wheelock to guarantee no losses to the Carlsons, in monitoring Claimants' accounts for risks associated with investments in only one or two speculative stocks and in permitting Wheelock to encourage additional stock purchases by Claimants which they could not afford. The Claimants further asserted that Hayne Miller was negligent for allowing Wheelock to make an unauthorized purchase of United Buying Service stock, in permitting Wheelock to tell Claimants the stock could be purchased without payment if sold within three days, and for its failure to notify Claimants of the investigation of Wheelock by the Minnesota Department of Commerce and of the reasons for Wheelock leaving the firm. The Claimants made other allegations against the Respondent including, but not limited to, trading for Claimants without written customer agreement, permitting Wheelock to promote trades on margin without obtaining a signed margin agreement, failure to state risks and failure to represent that Hayne Miller was a market maker.

In its Statement of Answer, Hayne Miller Financial, Inc. denied the allegations contained in the Statement of Claim and denied having any liability to the Claimants. The Respondent contended that the Carlsons indicated to Wheelock that they were speculative investors whose investment objectives were growth and speculation. The Carlsons allegedly signed options agreements indicating the inherent risks connected with option trading and that they were prepared financially to undertake such risks. Hayne Miller asserted many affirmative defenses including, but not limited to, the claim failed to state a basis on which relief can be granted, Claimants' losses were caused or contributed to by their own negligence, fault or failure to mitigate, the doctrines of ratification, estoppel, laches and waiver and Wheelock acted outside the scope of his employment and without Hayne Miller's actual or apparent authority.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$92,047.00 in actual damages and \$92,047.00 in punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety and that it be awarded costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Claimants and Respondent waived their right to the hearing in this matter in a letter dated December 11, 1995.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Janice K. Frankman, Esq. was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 31, 1995. Respondent, Hayne, Miller Financial, Inc. did submit a properly executed Submission Agreement yet is required to participate in accordance with Section 12 of the Code of Arbitration Procedure.

The Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Hayne Miller Financial, Inc. is hereby liable for and shall pay to the Claimant, Layne G. Carlson the sum of \$37,339.00 in actual damages plus simple interest at the rate of 6% per annum from October 23, 1989 until April 19, 1996;
2. Respondent, Hayne Miller Financial, Inc. is hereby liable for and shall pay to the Claimant, Gordon W. Carlson the sum of \$54,708.00 in actual damages plus simple interest at a rate of 6% per annum from June 26, 1989 until April 19, 1996;

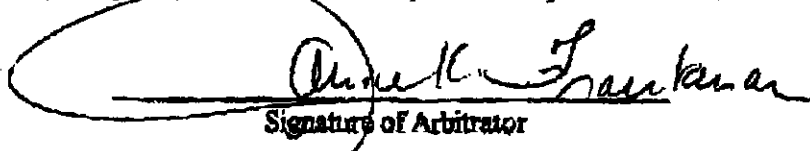
NASD Award 95-00653

page 3 of 3

3. All requests for relief not specifically granted herein are hereby denied in their entirety.
4. The parties shall bear all costs of arbitration including attorneys' fees except for those specifically enumerated herein; and
5. The \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Gordon W. and Layne G. Carlson shall be retained by the NASD. Respondent, Hayne, Miller Financial, Inc. is liable for and shall pay to the Claimants the sum of \$950.00 as reimbursement.

**AFFIRMATION**

I, Janice K. Frankman, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award



Signature of Arbitrator

Date of Decision: April 19, 1996