

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

**Eurocapital Group Ltd., and
Neftech International,**

Claimants.

and

No. 95-00797

**Goldman Sachs & Company,
William Miller,
Michael Dawson,
James Milligan,
and Jerome Wattenberg,**

Respondents.

REPRESENTATION OF PARTIES

Claimants, Eurocapital Group Ltd. and Neftech International, were represented by Evelyn V. Keyes, Esquire of Clements, O'Neill & Pierce located in Houston, Texas.

Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan, and Jerome Wattenberg, were represented by Ron Secrest, Esquire of Beck, Redden & Secrest located in Houston, Texas.

CASE INFORMATION

Claimants, Eurocapital Group Ltd. And Neftech International's Statement of Claim was filed on or about February 17, 1995. Claimant, Eurocapital Group, Ltd.'s Submission Agreement was signed by Greg Zak, Vice President on February 15, 1995. Claimant, Neftech International's Submission Agreement was signed by Gregory F. Zak, Vice President, on February 16, 1995. Claimants, Eurocapital Group Ltd. And Neftech International filed their Response November 8, 1996.

Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan and Jerome Wattenberg's Statement of Answer was filed on or about May 31, 1995. Respondent, Goldman Sachs & Company's Submission Agreement was signed by Robert J. Katz, Partner and General Counsel, on May 4, 1995. Respondent, William Miller, Michael Dawson and James Milligan's Submission Agreements were signed on May 2, 1995. Respondent, Jerome Wattenberg's Submission Agreement was signed on May 3, 1995. Respondents, Goldman Sachs & Company,

William Miller, Michael Dawson, James Milligan and Jerome Wattenberg's First Amended Answer, Motions to Dismiss and Counter-Claim was filed on or about October 23, 1996.

HEARING INFORMATION

Pre-Hearing Conferences with one Arbitrator were held on the following dates:

- July 31, 1996 for one (1) session;
- August 19, 1996 for one (1) sessions; and
- March 14, 1997 for one (1) session.

A Pre-Hearing Conference with three Arbitrators was held on:

- April 4, 1997 for one (1) session.

The Hearing was held before three Arbitrators on the following dates:

- August 18, 1997 for two (2) sessions;
- August 19, 1997 for two (2) sessions;
- August 20, 1997 for two (2) sessions;
- August 21, 1997 for two (2) sessions;
- August 22, 1997 for two (2) sessions;
- December 9, 1997 for two (2) sessions;
- December 10, 1997 for two (2) sessions;
- December 11, 1997 for two (2) sessions;
- December 12, 1997 for two (2) sessions;
- December 13, 1997 for two (2) sessions; and
- December 15, 1997 for three (3) sessions.

The Hearing was held in Houston, Texas.

CASE SUMMARY

In the Statement of Claim, Eurocapital Group Ltd. and Neftetech International (hereinafter, "Claimants"), two off-shore companies operated by Alex Genin, brought a claim against Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan and Jerome Wattenberg (hereinafter, "Respondents,") for losses in their accounts for trading in government bonds, derivative products and preferred stocks, and the associated use of reverse repurchase agreements for certain trades. Respondents allegedly recommended that Claimants place all their money in a mutual fund called Goldman Sachs GS-ARM-II Mutual Fund, which Respondents misrepresented as providing safety and liquidity through investments in short-term government securities. Claimant asserted that in June of 1992 and January of 1993, Respondents recommended the purchase of two \$1,000,000 blocks of subordinated debentures while falsely and misleadingly representing them as safe and appropriate for small companies seeking safety and liquidity. After Respondents in March of 1993 allegedly began recommending preferred stock by falsely representing the stocks as liquid and just as safe as a mutual fund but earning a higher rate of interest, Claimants withdrew all of the funds in

the Eurocapital account and invested them in huge blocks of interest-sensitive preferred stocks in which Goldman Sachs was a market maker. As alleged, Respondents' recommendations for trades increased geometrically from that point until, within a few months, Respondents churned the preferred stocks in the Eurocapital account, purchasing more exotic and speculative securities. Claimants contended that in October of 1993, Respondents pressured Claimants to use reverse repurchase agreements financed by Goldman Sachs to buy huge amounts of volatile, interest-sensitive proprietary derivatives called "G-7 Bull notes" and "Euro Bull bonds" as well as Canadian and U.S. treasury bonds and French franc bonds. Claimants further contended that since Respondents were financing Eurocapital's escalating investments themselves by reverse repo agreements, they were able to leverage Eurocapital beyond the limit permissible for a margin account and to earn interest on the loans. In addition, Claimants alleged that after Respondents placed Nefitech's entire account worth \$1,035,000 into junk bonds in a single company, they moved the funds to other junk bonds then moved them again to the same preferred stocks into which they had placed Eurocapital.

Although Claimants originally brought this claim for trading in common stocks generally, the claim was reduced to losses relating to two specific common stocks at the hearing. Claimants made the following allegations: misrepresentation in connection with the sale of securities in violation of sections 10(b) and 20 of the Securities Exchange Act of 1934 and Rule 10 (b)-5; misrepresentation in connection with the sale of securities in violation of Sections 5, 12(2) and 15 of the Securities Act of 1933; breach of fiduciary duty; unsuitability of the securities and trading strategies; failure to properly supervise the accounts; excessive trading ("churning;") negligence and gross negligence; fraud; and, violations of the Texas Deceptive Trade Practices Act.

Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan and Jerome Wattenberg answered and asserted that the accounts were non-discretionary as well as that Claimants controlled the level of risks associated with their investments, were fully aware of and directed their investment activities, and were sufficiently sophisticated to understand the nature of and risks associated with their investments. Respondents specifically denied: that any misrepresentations or violations of securities laws or the existence of or breach of fiduciary duty; that the securities purchased by Claimants in these non-discretionary accounts were unsuitable; that there was lack of proper supervision, excessive trading, or negligence; and that any fraud had been intended or had occurred. Respondents also asserted that some of the transactions or which Claimants complained were not within the ambit of the 1934 or 1933 Acts and that Claimants failed to state a claim under either Act. Additionally, Respondents filed a counterclaim seeking attorneys' fees for Claimants' alleged bad-faith filing of a claim under the Texas Deceptive Trade Practices Act.

RELIEF REQUESTED

Claimants, Eurocapital Group, Ltd. And Nefitech International, requested an award for \$5,883,506.04 in actual damages and not less than \$16,831,704.08 in total damages (including interest) along with post judgment interest, attorneys' fees, punitive damages and sanctions.

Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan and Jerome Wattenberg requested that the claims asserted against them be dismissed in their entirety and filed a counterclaim seeking sanctions, attorneys' fees and costs for Claimants' alleged bad faith filing of a claim under the Texas Deceptive Trade Practices Act.

OTHER ISSUES CONSIDERED AND DECIDED

After review and consideration of all relevant submissions, the undersigned arbitrators granted on or about May 29, 1997 Respondents' Request for Leave to File a First Amended Answer, Motions to Dismiss and Counter-Claim.

The parties have agreed that the Award in this matter may be executed in 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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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. That the Statement of Claim submitted by Claimants, Eurocapital Group Ltd. and Nefitetch International is hereby denied in its entirety and dismissed with prejudice;
2. That the Counter-Claim submitted by Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan, and Jerome Wattenberg is hereby denied in its entirety and dismissed with prejudice;
3. That other than forum fees addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,500 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) pre-hearing conferences with one arbitrator x \$300 plus one (1) pre-hearing conference with three arbitrators x \$1,500 and there were twenty-three (23) hearing sessions x \$1,500 = \$36,900 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code,) 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 Section 10332(c) of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall **retain** the non-refundable filing fee of \$300 and shall **retain** as forum fees the hearing session deposit of \$1,500 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Claimants, Eurocapital Group Ltd. and Nefitech International. Claimants, Eurocapital Group Ltd. and Nefitech International are jointly and severally liable for and shall pay the sum of \$16,950 in forum fees to the NASD Regulation, Inc., Office of Dispute Resolution

Pursuant to Section 0332© of the Code, Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan, and Jerome Wattenberg, are jointly and severally liable for and shall pay the sum of \$18,450 in forum fees to NASD Regulation, Inc., Office of Dispute Resolution.. Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan, and Jerome Wattenberg, are jointly and severally liable for and shall pay the sum of \$250 for the claim filing fee for the Counter-Claim.

Pursuant to Section 10319 of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain \$2,000 in postponement fees, previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Respondents, Goldman Sachs & Company, William Miller, Michael Dawson, James Milligan, and Jerome Wattenberg. Claimants, Eurocapital Group, Ltd. and Nefitech International are liable for and shall pay the sum of \$1,000 in postponement fees to the NASD Regulation, Inc., Office of Dispute Resolution.

Pursuant to Section 10333 of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500 member surcharge previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by Respondent, Goldman, Sachs & Company.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

R. Lee Britton, Jr., Esq.
R. Lee Britton, Jr., Esq.
Chairperson, Public Arbitrator

February 20, 1998
Date

Walton L. Huff
Walton L. Huff
Panelist, Public Arbitrator

February 20, 1998
Date

Thomas A. Thornhill, Jr.
Thomas A. Thornhill, Jr.
Panelist, Industry Arbitrator

February 22, 1998
Date

For NASD use only:

Date Award was served on the parties: February 27, 1998