

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Names of Claimants

William Morgan and Mary E. McCleery

and

Case Number 95-01539

Names of Respondents

APS Financial Corporation, Samuel Ray Granett,
Dana Jonathan Guillory and John Joseph Glade

REPRESENTATION OF PARTIES

William Morgan and Mary E. McCleery ("Claimants") were represented by Dick Gann, Esq. and Stephanie Theban, Esq. of Riggs, Abney, Neal, Turpen, Orbison & Lew located in Tulsa, OK.

APS Financial Corporation, Samuel Ray Granett, Dana Jonathan Guillory and John Joseph Glade ("Respondents") were represented by David D. Sterling, Esq. of Baker & Botts located in Houston, TX.

CASE INFORMATION

The Statement of Claim was filed on or about March 27, 1995.

The Submission Agreement of Claimant, William Morgan was signed on March 17, 1995.

The Submission Agreement of Claimant, Mary E. McCleery was signed on May 1, 1995.

The Joint Statement of Answer was of all Respondents was filed on or about June 27, 1995.

The Submission Agreement of Respondent, APS Financial Corporation was signed on June 21, 1995 by Samuel Ray Granett, President.

The Submission Agreement of Respondent, Samuel Ray Granett was signed on June 21, 1995.

The Submission Agreement of Respondent, Dana Jonathan Guillory was signed on June 21, 1995.

The Submission Agreement of Respondent, John Joseph Glade was signed on June 21, 1995.

HEARING INFORMATION

The hearing was held in Oklahoma City, OK on the following dates:

- April 29, 1996 for two (2) sessions
- April 30, 1996 for two (2) sessions
- May 1, 1996 for two (2) sessions

CASE SUMMARY

In the Statement of Claim, William Morgan ("Morgan") alleged that APS Financial Corporation ("APS"), by and through its agent, Harvey Vaughn III ("Vaughn") solicited him to purchase Vista Properties bonds and Rexene bonds in 1992, 1993 and/or 1994. Morgan claimed that due to APS's fraudulent or negligent failure to inform Morgan of Original Issue Discount ("OID") tax obligations on the bonds, Morgan recognized approximately \$336,255.00 in taxable income. Morgan alleged that APS, by and through its research reports and Vaughn, induced him to purchase Ampex Group bonds and Zale Corporation bonds in 1992 and/or 1993. According to the Claim, the research reports indicated a return of 70 to 80 cents on the dollar for Ampex and at least 45 cents on the dollar for the Zale bonds. Morgan contended that the research reports issued by APS were grossly negligent or fraudulent. As alleged, APS, through its research reports and Vaughn, induced Morgan's mother, Mary E. McCleery ("McCleery") to purchase Zale Corporation bonds and Cherokee County bonds. McCleery claimed that the research reports issued by APS were grossly negligent or fraudulent.

In their Statement of Answer, APS Financial Corporation, Samuel Ray Granett, Dana Jonathan Guillory and John Joseph Glade denied the allegations set forth in the Statement of Claim. Respondents specifically stated each of the investments complained of was made by Morgan, an extremely sophisticated and professional investor who sought high returns. Respondents asserted that the Claimants failed to allege any actionable conduct on behalf of any of the Respondents nor did they articulate any viable legal theories. Respondents maintained that the Claimants failed to state a claim upon which relief can be granted. According to the Respondents, the claims made by Morgan and McCleery were barred by the applicable statutes of limitation, statutes of repose as well as by the doctrines of waiver, estoppel and laches. Respondents maintained that Morgan made investment decisions on his own behalf and on behalf of his mother and was solely responsible for any losses.

RELIEF REQUESTED

Claimant, William Morgan requested an award in the amount of \$1,588,211.00 in actual damages and Claimant, Mary E. McCleery requested an award in the sum of \$18,000.00 in actual damages.

Respondents requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

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.

Respondents, Samuel Ray Granett, Dana Jonathan Guillory and John Joseph Glade submitted a motion to dismiss the Statement of Claim dated June 27, 1995 alleging that Claimants named these individuals was for the purpose of harassment and was not proper under NASD rules. After reviewing the Claimants' responses dated July 12, 1995 and July 24, 1995 as well as the Respondents' reply, the Director of Arbitration determined that the issue regarding the validity of the Claimants' allegations against Respondents, Granett, Glade and Guillory was substantive in nature and rested within the exclusive jurisdiction of the arbitrators. At the hearing, the Respondents re-raised their motion to dismiss. Following a deferral of a decision on the motion until after the Claimants case in chief, the arbitrators then determined that the motion was denied.

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, APS Financial Corporation and Samuel Ray Granett are hereby, jointly and severally, liable for and shall pay to Claimant, William Morgan the sum of \$7,435.28 for actual damages;
2. Respondents, APS Financial Corporation and Samuel Ray Granett are hereby, jointly and severally, liable for and shall pay to Claimant, Mary E. McCleery the sum of \$25,367.00 in actual damages;
3. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein; and
4. Any requests for relief not specifically granted are hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session. There were six (6) sessions x \$1,000.00 = \$6,000.00 in forum fees. Pursuant to Section 43(b) of the 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 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000. 00 previously deposited with the NASD by the Claimants. Respondents, APS Financial Corporation and Samuel Granett are hereby, jointly and severally, liable for and shall pay to Claimants, William Morgan and Mary E. McCleery the amount of \$1,250.00 as reimbursement. Respondents, APS Financial Corporation and Samuel Ray Granett are hereby, jointly and severally, liable for and shall pay to the NASD the sum of \$5,000.00 in additional forum fees. The NASD shall retain the \$500.00 member surcharge assessed pursuant to Section 45 of the Code and previously submitted by APS Financial Corporation.

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

Arbitrators' Signatures:

Dated:

Clell I. Cunnigham, III, Esq.
Clell I. Cunningham, III, Esq.
Public Arbitrator, Presiding Chairman

June 12, 1996

Jerry Cord Wilson, Esq.
Jerry Cord Wilson, Esq.
Public Arbitrator, Panelist

June 17, 1996

Christopher D. Dickens
Christopher D. Dickens
Industry Arbitrator

June 12, 1996

Date served by the NASD: June 24, 1996

National Association of Securities Dealers, Inc.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of the Claimants

William Morgan and
Mary E. McCleery

and

REPORT OF ARBITRATORS
95-01539

Names of Respondents

APS Financial Corporation,
Samuel Ray Granett,
Dana Jonathan Guillory and
John Joseph Glade

During the course of the hearing in the above captioned matter, the undersigned arbitrators heard testimony and evidence which called into question the actions of Harry Vaughn, Jr. and Harvey Vaughn, III. Specifically, those actions include making recommendations to unsuitable investor and to advise investor to disregard warning language in research reports of APS Financial Corporation. The undersigned arbitrators feel that the District Office of the NASD should investigate the matter to determine whether there were any violations of the NASD Rules of Fair Practice.

Arbitrators' Signatures

Clell I. Cunningham, III, Esq.

Clell I. Cunningham, III, Esq.

Jerry Cord Wilson, Esq.

Jerry Cord Wilson, Esq.

Christopher D. Dickens

Christopher D. Dickens