

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
AWARD**

In the matter of the Arbitration Between

Name of Claimant(s)

Andrew G. & Antoinette Seroka
Andrew G. Seroka, Trustee of Estate of Marie Sanson

v.

NASD Arbitration
No. 95-04009

Name of Respondent(s)

Cruttenden & Co.
Charles Gray

REPRESENTATION

For Claimants: J. Leo Federman,
Investors Rights Association,
Santa Barbara, California

For Respondents: Elizabeth A. Kendrick, Esq.
Keesal, Young & Logan,
Long Beach, California

CASE INFORMATION

Statement of Claim filed: September 22, 1995

Claimants' Submission Agreement signed: August 17, 1995

Joint Statement of Answer filed: January 8, 1996

Respondents' Submission Agreements signed:

Cruttenden & Co.: February 23, 1996

Charles Gray: None submitted.

HEARING INFORMATION

A hearing on the motion to dismiss and request for sanctions was held via telephone conference call on March 25, 1996, and lasted 1 session.

CASE SUMMARY

Claimants alleged breach of fiduciary duty, negligence and lack of suitability in the recommendation and investment in limited partnership shares of VMS Strategic Land Fund II through Sutro & Company. Claimants further alleged failure to disclose the declining value of the shares of VMS so that Claimants could determine whether or not to sell their shares.

Respondents denied the allegations of the claim, and asserted that the VMS shares had been purchased through Charles Gray when he was employed by Sutro. Respondents stated that at the time Dr. and Mrs. Seroka transferred their VMS shares into their account at Cruttenden, the shares were valued at \$1.25 per share, and when they transferred their shares out of the Cruttenden account, the shares were valued at \$1.625. Respondents also asserted that Cruttenden has no record of an account in the name of Marie Sanson, and made no statements on the status of her investment.

Respondents further asserted that all Claimants in this action had previously filed claims against Charles Gray and Sutro & Co. seeking losses incurred in connection with their VMS investments, and that on October 27, 1995, Claimants Andrew and Antoinette Seroka entered into a Settlement Agreement and Mutual General Release with Sutro and Mr. Gray, and Claimant Andrew Seroka, as Trustee of the Marie Sanson Trust and executor of Marie Sanson Estate, agreed to dismiss any and all causes of action against Mr. Gray.

RELIEF REQUESTED

Claimants requested damages of \$37,500 plus interest, punitive damages, and costs of arbitration.

Respondents requested dismissal of all claim.

OTHER ISSUES - FINDINGS

Cruttenden Roth and Charles Gray ("Respondents") have moved to dismiss the claims of Andrew G. and Antoinette Seroka and Andrew G. Seroka as trustee of the Estate of Marie Sanson ("Claimants").

Claimants oppose the motion. Sanctions against the Claimants are requested.

It has been stipulated that Claimants have never maintained an account at Cruttenden in the name of "Andrew G. Seroka as trustee of the Estate of Marie Sanson".

At issue is whether Mr. Gray has been previously released from any liability by Claimants, arising from their investment in VMS Strategic Land Fund II ("VMS") under NASD Case #93-01130. Finally, whether damages were incurred while Claimant Seroka held his position in VMS at Cruttenden during the period 9/26/90 to 2/07/91.

CONCLUSIONS OF LAW

1. On October 27, 1995, Claimants entered into a Settlement Agreement and Mutual General Release with Sutro and Mr. Gray. Claimants have wrongly pursued this action against Mr. Gray despite Claimants' complete release of any claims arising from this purchase of VMS.

2. Neither Marie Sanson nor the trustee of her estate has maintained an account at Cruttenden. Accordingly, any claim against Respondents arising out of this alleged account should be dismissed.

3. Given the fact that Claimant released Mr. Gray "to the fullest extent permitted by law" from any claims arising out of the Claimants' purchase of VMS and that Claimants did not purchase VMS through Cruttenden and, during the brief period an account was maintained at Cruttenden, the value of VMS increased, there has been no showing that Claimants have suffered any damages.

4. This claim has been brought without a reasonable inquiry into the facts.

5. There remains no genuine issue of material fact to be decided.

AWARD

After considering the pleadings, the motion papers and the arguments of counsel during the March 25, 1996, telephone hearing, the undersigned arbitrators have made the following determination:

1. Respondents' motion to dismiss is granted.

2. Claimants shall pay sanctions in the amount of \$1500 to Respondents as attorney's fees and costs.

FORUM FEES

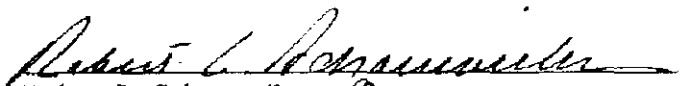
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the

\$120 non-refundable filing fee paid by Claimants. Claimants' \$400 hearing session deposit shall be retained as forum fees for 1 session.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Robert L. Schouweiler	Public Arbitrator
Howard H. Baller	Public Arbitrator
Michael G. Clark	Industry Arbitrator

Concurring Arbitrators' Signatures


Robert L. Schouweiler . *Chair person*

Howard H. Baller

Michael G. Clark

Date served: 4/25/96

\$120 non-refundable filing fee paid by Claimants. Claimants' \$400 hearing session deposit shall be retained as forum fees for 1 session.

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Public Arbitrator

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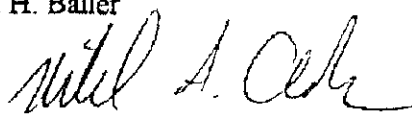
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