

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Stanley Kozlowski

95-04179

Name of Respondents

Sutro & Co. Incorporated
James V. Cuff, Jr.

REPRESENTATION

For Claimant appeared Robert A. Dean, Esq. of The Dean Law Firm located on Grand Island, New York.

For Respondents appeared David W. Studley, Esq. located in San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on August 21, 1995.

Claimant's Submission Agreement was signed on August 23, 1995.

A Joint Statement of Answer was filed on behalf of Respondents Sutro & Company and James V. Cuff, Jr. on December 5, 1995.

Respondent Sutro & Company, Inc.'s Submission Agreement was executed on October 20, 1995.
Respondent Cuff's Submission Agreement was executed on November 13, 1995.

HEARING INFORMATION

The hearings were held on October 29, 30 and 31, 1996 in Buffalo, New York. The hearings lasted a total of five sessions.

CASE SUMMARY

Claimant alleged that his broker, James V. Cuff, Jr. ("Cuff"), and his broker's employer, Sutro & Co., Inc. ("Sutro") recommended that Claimant purchase an unsuitable stock contrary to Claimant's express instructions, as well as Respondents misrepresentations and fraud in connection with both the purchase and the holding of the unsuitable investment resulting in a loss to Claimant of \$49,239.81.

Claimant further alleged that on or about October 27, 1994, Claimant telephoned Respondent Cuff and informed him that Claimant had approximately \$50,000.00 from the sale of his late mother's house he

wished to invest in a safe, low risk investment for a short term, not to exceed nine months at which time Claimant would need the \$50,000.00 back to complete construction of his new home.

It was also alleged by Claimant that he Cuff that he wished to purchase Intel stock, but Respondent advised Claimant that he could not purchase enough of Intel to realize any profit in the short term and recommended that Claimant invest the entire \$50,000.00 in a company known as Escagenetics. Following Claimant's purchase of Escagenetics, Escagenetics Corp. continued to lose money and its stock continued its trend of declining in value. Claimant alleged that he telephoned Respondent Cuff to ask if Claimant should sell and mitigate Claimant's financial loss. Respondent Cuff alleged convinced Claimant not to sell the stock but rather to adopt a "wait and see" strategy. Thereafter, on or about February 8, 1995 trading was suspended on Escagenetics stock and Claimant's stock became essentially worthless.

Respondents denied all allegations of wrongdoing asserted against them in the statement of claim. Respondents maintained that claimant opened an account with Respondent Cuff in 1986 and quickly established a pattern of trading that would follow him during the period that his accounts stayed with Respondent Cuff. Respondents further maintained that Escagenetics stock was first offered to the public in 1987 at \$9 per share. Respondent Cuff first recommended the stock to Claimant in March 1989. Claimant purchased 900 shares at \$5 1/8 per share and continued to buy the stock through September 1990. In 1991, the stock price more than tripled by October and Claimant allegedly began selling his stock at that time, selling most of his stock above \$9.00 per share.

Respondents maintained that in June, 1994 Claimant purchased an additional 700 shares of Escagenetics stock for \$2 11/16 in his IRA account knowing that the price of the stock was volatile because it had declined substantially from his own sales prices a few years earlier. Five months later Claimant allegedly called Respondent Cuff and was eager to invest some extra money available from the sale of his house. Claimant wanted his money to grow rapidly and was particularly interested in stock or stocks that Respondent Cuff thought were candidates for quick capital appreciation. Claimant instructed Respondent Cuff to invest the \$50,000.00 entirely in Escagenetics. Respondents maintained that only two months after his purchase, Claimant's monthly statement shows that the stock was priced at \$ 15/16 per share and Claimant made no effort to sell the stock before it was delisted in February.

Respondents also maintained that Claimant continued to hold his position, just as he had done in the past, waiting for the price to rebound. Respondents further maintained that Claimant does not allege any misstatements were made to him after his October purchase, merely that Respondent Cuff encouraged him to "wait and see."

RELIEF REQUESTED

Claimant requested compensatory damages arising from his unsuitable investment in the sum of \$49,239.81. In addition, Claimant requested that Respondents be assessed punitive damages for their fraud of \$147,719,43, representing three times the Claimant's investment plus reasonable attorney's fees and costs in the present arbitration.

Respondents requested that the Statement of Claim be dismissed in its entirety, that they each be awarded their costs of this arbitration and for such other relief as the panel shall deem to be appropriate.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

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. All claims asserted against Respondents Sutro & Co. and Cuff be and hereby are dismissed with prejudice.
2. All claims for punitive damages be and hereby are dismissed with prejudice.
3. Each party shall bear their respective costs, including attorneys' fees, except that Respondents Sutro and Cuff be and hereby are liable and shall pay the cost associated with the monitoring of the testimony of Witness Baird via telephone by an attorney located in San Francisco, California.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 sessions X \$750 = \$3,750.00

Claimant be and hereby is liable and shall pay to NASD Regulation, Inc. the sum \$1,875.00 representing one-half of the forum fees assessed by the arbitration panel. However, Claimant previously deposited \$750.00. Therefore, the amount due from the Claimant to NASD Regulation, Inc. is \$1,125.00.

Respondents be and hereby are jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$1,875.00 representing one-half of the forum fees assessed by the arbitration panel.

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

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Concurring Arbitrators' Signatures
Name



David Buch, Esq.
Public Arbitrator - Chairperson

John P. DeLuca
Public Arbitrator

Anthony Vitarza
Industry Arbitrator

I, David Buch, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



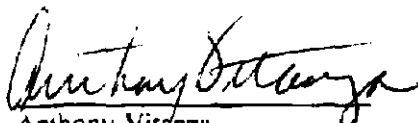
David Buch, Esq.

Date of Decision: December 12, 1996


Concurring Arbitrators' Signatures
Name

David Buch, Esq.
Public Arbitrator - Chairperson

John P. DeLuca
Public Arbitrator


Anthony Vitanza
Industry Arbitrator

I, **Anthony Vitanza**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Anthony Vitanza

Date of Decision: December 12, 1996