

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Gustavus Adolphus College,

Claimant,

v.

No. 95-05278

Craig-Hallum, Inc., and
Hamilton Investments, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimant Gustavus Adolphus College was represented by Stephen P. Kelly, Esquire and Denis E. Grande, Esquire of Mackall Crounse & Moore PLC located in Minneapolis, Minnesota.

Respondents Craig-Hallum, Inc. and Hamilton Investments, Inc. were represented by Lawrence T. Hofmann, Esquire of Zelle & Larson located in Minneapolis, Minnesota.

CASE INFORMATION

Claimant Gustavus Adolphus College's Statement of Claim was filed on or about November 7, 1995.

Claimant Gustavus Adolphus College's Submission Agreement was signed on October 17, 1995 by Kenneth Westphal, Vice President of Gustavus Adolphus College.

Respondents Craig-Hallum Inc. and Hamilton Investments, Inc.'s joint Statement of Answer was filed on or about February 2, 1996.

Respondent Hamilton Investments, Inc.'s Submission Agreement was signed on February 22, 1996 by Lawrence T. Hofmann, attorney for Craig-Hallum, Inc. and Hamilton Investments, Inc.

The NASD has no record of a properly executed Submission Agreement from respondent Craig-Hallum, Inc.

HEARING INFORMATION

There were no pre-hearing conferences.

The hearing was held on: August 26, 1996, for two (2) sessions;
August 27, 1996, for two (2) sessions;
August 28, 1996, for two (2) sessions;
October 14, 1996, for two (2) sessions; and
October 15, 1996, for one (1) session.

The hearing was held in Minneapolis, Minnesota.

CASE SUMMARY

Claimant Gustavus Adolphus College ("Claimant") alleged that respondents Craig-Hallum, Inc. and Hamilton Investments, Inc. (hereinafter collectively referred to as "Respondents") breached their duty to Claimant by omitting and misrepresenting material facts in their recommendations on Continental Savings of America ("Continental") Series A convertible preferred stock, which Claimant purchased. Specifically, Claimant asserted that Respondents, in their research reports on Continental, failed to disclose all available information, especially the risk associated with investing in Continental. Furthermore, Claimant asserted that in light of Continental's deteriorating financial situation, and increasing risk, Respondents not only never recommended selling Continental, but continued to advise Claimant to hold these securities. As a result, Claimant alleged that it suffered damages in the amount of \$357,806.95, which was its purchase costs of Continental. Claimant made the following legal claims: (1) violation of Rule 10(b)-5; (2) violation of The Minnesota Blue Sky Act, Minn. Stat. § 80A.01 et. seq.; (3) unsuitability pursuant to the NASD Rule of Fair Practice, Article III, § 2; (4) breach of fiduciary duty; (5) violation of Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69, subd. 1; (6) fraud; (7) negligent misrepresentation; and (8) right to punitive damages.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Claimant was well aware of the risks associated with investing in growth stocks, which was the investment strategy Claimant requested, and that Continental was consistent with this investment strategy. Respondents contended that the research reports upon which Claimant alleged reliance stated that they did not guarantee accuracy, that they were not complete, and that additional information was available upon request. Respondents asserted that Claimant never requested any additional information.

RELIEF REQUESTED

Claimant Gustavus Adolphus College requested: an award in the amount of \$357,806.95 for compensatory damages; an award of interest; an award of costs and reasonable attorneys' fees; and an award of punitive damages.

Respondents Craig-Hallum, Inc. and Hamilton Investments, Inc. requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Craig-Hallum, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 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 respondents Craig-Hallum, Inc. and Hamilton Investments, Inc. are jointly and severally liable and shall pay claimant Gustavus Adolphus College \$61,000 for compensatory damages; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was no pre-hearing conferences and there were nine (9) hearing sessions $\times \$750 = \$6,750$ in forum fees. Pursuant to §10332(b) 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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Gustavus Adolphus College.

Pursuant to § 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the member surcharge in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by respondent Hamilton Investments, Inc.

Claimant Gustavus Adolphus College is liable for and shall pay forum fees in the amount of \$2,625 (= ½ \$6,750 total forum fees - \$750 hearing session deposit).

Respondents Craig-Hallum, Inc. and Hamilton Investments, Inc. are jointly and severally liable for and shall pay forum fees in the amount of \$3,375 (= ½ \$6,750 total forum fees).

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

Concurring Arbitrators:

Dated:

/s/ John C. DeMoss

John C. DeMoss, Esquire
Public Arbitrator, Presiding Chair

November 21, 1996

/s/ James H. Levy

James H. Levy
Public Arbitrator

November 29, 1996

Dissenting Arbitrator:

/s/ Lawrence Furman

Lawrence Furman
Industry Arbitrator

November 25, 1996
