

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Bob Gist and Treva Gist,

Claimants,

and

No. 95-05748

APS Financial Corp., Peter Kenneth Aman, and
Southwest Securities, Inc.,

Respondents,

REPRESENTATION OF PARTIES

Claimants Bob Gist and Treva Gist were represented by Nicholas A. Foley, Esquire, of Bush, Craddock & Reneker, located in Dallas, Texas.

Respondents APS Financial Corp., Peter Kenneth Aman, and Southwest Securities, Inc., were represented by Kenneth E. Johns, Jr., Esquire, and Barry Burgdorf, Esquire, of Vinson & Elkins, located in Dallas, Texas. Pursuant to a motion for dismissal, Respondent Southwest Securities, Inc. was not represented at the hearing in this matter.

CASE INFORMATION

Claimants Bob Gist and Treva Gist' Statement of Claim was filed on or about December 7, 1995. Claimants Bob Gist and Treva Gist' Submission Agreement was signed on November 29, 1995.

Respondents APS Financial Corp. and Peter Kenneth Aman's Statement of Answer was filed on or about January 25, 1996. Respondent Southwest Securities, Inc.'s Motion to Dismiss and Statement of Answer was filed on or about January 25, 1996. Respondent APS Financial Corp.'s Submission Agreement was signed on January 22, 1996, by John Lindquist, Compliance Officer of APS Financial Corp. Respondent Petter Kenneth Aman's Submission Agreement was signed on January 22, 1996. Respondent Southwest Securities, Inc.'s Submission Agreement was signed on January 22, 1996, by Jerome S. Wade, Vice President & General Counsel of Southwest Securities, Inc.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: November 13, 1996, for three (3) sessions;
November 14, 1996, for two (2) sessions; and
November 15, 1996, for two (2) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Claimants Bob Gist and Treva Gist ("Claimants") alleged that Respondent Peter Kenneth Aman ("Aman"), through Respondents APS Financial Corp. ("APS") and Southwest Securities, Inc. ("Southwest"), made unauthorized trades in their account. According to Claimants, in April 1991, they opened an account with APS, which was carried with Southwest, for the sole purpose of investing in high quality municipal bonds. Claimants asserted that, in late 1993, APS informed them that they needed to complete and sign some documents in order for APS to be able to continue holding their municipal securities. Claimants claimed, however, that these documents, which they completed, signed, and returned based on APS's representation, were a margin and short account customer agreement and a new account agreement. They further asserted that Aman, after becoming their broker of record in late 1993 or early 1994, began using the non-discretionary margin account to make trades in the following highly speculative and inappropriate investments, of which Claimants were unaware and did not authorize.

| Security Purchased | Purchase Date | Amount Paid | Date Sold | Amount Received | Gain (Loss) |
|---|----------------------|--------------------|------------------|------------------------|--------------------|
| Envirodyne Industries Sr. Sub. Debt - Defaulted | 11/22/93 | \$98,519 | 3/22/94 | \$73,168 | \$(24,901) |
| Transworld Airlines Sr. Sec. Notes | 3/23/94 | 161,875 | 6/10/94 | 134,750 | (27,125) |
| US Air Sr. Note | 5/16/94 | 100,875 | 8/22/94 | 101,500 | 1,470 |
| Jacksonville Fla. HFAHRFS | 9/10/93 | 99,500 | 5/20/94 | 86,450 | (13,050) |
| Media Vision Tech Conv. Debt | 5/20/94 | 85200 | 8/24/94 | 79,488 | (5,712) |
| US Air Sr. Note | 6/10/94 | 115,840 | 8/22/94 | 116,000 | 160 |
| Cherokee Sub. Deb. | 7/18/94 | 68,000 | 3/14/95 | 25,598 | (42,402) |
| US Air Sr. Note | 8/3/94 | 19,250 | 3/14/95 | 18,178 | (1,072) |

In addition to these losses, Claimants asserted that they had paid significant amounts in margin interest. Claimants made the following claims: (1) violations of the Texas Deceptive Trade Practices Act; (2) common law fraud; (3) breach of contract; (4) conversion; and (5) theft.

Respondents APS and Aman ("Respondents") denied the allegations set forth in the Statement of Claim. Respondents stated that Claimants were fully informed of the purposes of the new account agreement and the margin and short account customer agreement, and each was discussed with them. Respondents also stated that on the customer account information form submitted and signed by Bob Gist, he informed APS that his loss exposure was 20%-30% and that he was interested in corporate and municipal investments. Respondents asserted that each of the transactions complained of were fully discussed and authorized by Claimants, and that the Jacksonville, Florida bonds were a municipal issue consistent with Claimants alleged investment objectives. Furthermore, according to Respondents, Claimants have misrepresented losses of the alleged unauthorized trades and have omitted other transactions which resulted in gains. Consequently, according to Respondents, Claimants account losses, including unrealized losses, are much less than \$140,000.00. Respondents made the following affirmative defenses: (1) Claimants failed to state a claim upon which relief can be granted; (2) Claimants' claims are limited by the applicable statutes of limitations; (3) Claimants are estopped to claim damages for the acts alleged; (4) Claimants waived and/or ratified the conduct of APS and Aman with regard to their account; (5) Claimants damages, if any, are the result of their own imprudence for which APS and/or Aman has no liability; (6) Claimants failed to mitigate their damages, if any; (7) Claimants authorized all transactions about which they complain; (8) the Deceptive Trade Practices Act does not apply to the purchase and sale of securities; and (9) Claimants' Deceptive Trade Practices Act claim is groundless in fact and law and brought in bad faith for the purposes of harassment.

RELIEF REQUESTED

Claimants Bob Gist and Treva Gist requested an award for actual damages, costs, pre-judgment interest, post-judgment interest, attorney fees, and damages of up to three times actual damages or exemplary damages, in an amount of approximately \$560,000.00 exclusive of fees and interest.

Respondents APS Financial Corp. and Peter Kenneth Aman requested that the claim for damages under the Deceptive Trade Practices Act asserted against them be dismissed, that the remaining claims asserted against them be denied in their entirety, and that they be awarded their costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing in this arbitration, Claimants Bob Gist and Treva Gist moved for dismissal of proceedings without prejudice against Respondent Southwest Securities, Inc.. The undersigned panel of arbitrators granted the motion and ordered Respondent Southwest Securities, Inc. dismissed without prejudice.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent APS Financial Corp. is liable for and shall pay Claimants Bob Gist and Treva Gist compensatory damages in the amount of \$77,992.91, plus interest at the Texas statutory rate which begins to accrue from the date of this award;
2. Respondent Peter Kenneth Aman is liable for and shall pay Claimants Bob Gist and Treva Gist compensatory damages in the amount of \$8,000.00, plus interest at the Texas statutory rate which begins to accrue from the date of this award; and
3. 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 \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were seven (7) hearing sessions x \$1,000 = \$7,000 in forum fees. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants Bob Gist and Treva Gist.

NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent APS Financial Corp.

Respondent APS Financial Corp. is liable for and shall pay forum fees in the amount of \$6,000 (= \$7,000 total forum fees - \$1,000 hearing session deposit from Claimants Bob Gist and Treva Gist).

Respondent Southwest Securities, Inc. is liable for and shall pay the member surcharge fee pursuant to §10333 of the Code in the amount of \$500.

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

Dated:

/s/ Daniel A. Kile

Daniel A. Kile, Esquire
Public Arbitrator, Presiding Chair

January 29, 1997

/s/ Alice A. Waters

Alice A. Waters, Esquire
Public Arbitrator

February 14, 1997

/s/ Alice I. Hughes

Alice I. Hughes
Industry Arbitrator

February 18, 1997