

## AWARD

### NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Leroy E. Nedom  
Gwendolyn C. Nedom

v.

Arbitration No.  
96-00375

Name of Respondent(s)

Hugh Gee & Company, Inc.  
Quest Securities, Inc.  
Hugh Gee  
Terrence H. Gee

---

### REPRESENTATION OF PARTIES

Leroy E. Nedom and Gwendolyn C. Nedom ("Claimant") was represented by Scot D. Bernstein, Esq., Law Offices of Scot D. Bernstein, Sacramento, California.

Hugh Gee & Company, Inc. and Hugh Gee were represented by Robert Rudolph, Esq., San Francisco, California.

Quest Securities, Inc. and Terrence H. Gee were represented by Douglas Martin, Esq., Law Offices of Douglas Martin, San Francisco, California.

### CASE INFORMATION

Claimants Statement of Claim was filed on or about January 22, 1996.  
Claimants Submission Agreement was signed on January 23, 1996.

The Joint Statement of Answer for Hugh Gee & Co., Hugh Gee, Quest Securities, Inc., and Terrence Gee was filed on or about April 8, 1996.

Quest Securities' Statement of Answer was filed on or about February 16, 1996.

Quest Securities' Submission Agreement was signed on February 21, 1996.

Terrence H. Gee's Submission Agreement was signed on January 22, 1997.

Hugh Gee's Submission Agreement was signed on January 22, 1997.

### **HEARING INFORMATION**

A pre-hearing conference was held on January 17, 1997.

The hearing was held in San Francisco on the following dates:

January 29, 1997	2 sessions;
January 30, 1997	1 session;
February 26, 1997	2 sessions;
February 28, 1997	2 sessions;
March 5, 1997	2 sessions;
April 14, 1997	2 sessions.

### **CASE SUMMARY AND RELIEF REQUESTED**

This case arises out of stockbroker/financial planner misconduct. Claimants sought safe, conservative investments from respondents Hugh Gee & Company and its sole shareholder, Hugh Gee. Those respondents sold two disputed products to claimants: \$45,915 of shares of Commonwealth Equity Trust, a REIT labelled as "speculative" by its own prospectus; and \$38,000 of limited partnership interests in WNC Housing Tax Credit Fund II, L.P., a low income housing tax credit limited partnership with eleven pages of risk factors. Claimants alleged that neither of those investments was appropriate for their needs.

Claimants alleged that all respondents engaged in a continuing fraud and continuing fraudulent concealment of the wrongdoing alleged in the statement of claim. Claimants alleged that all respondents engaged in false representations, false pretenses and actual fraud in connection with the transactions and ongoing concealment described above. Claimants also alleged that respondents' actions constituted fraud or defalcation while acting in a fiduciary capacity with respect to claimants and their accounts.

Claimants further alleged that Terrence Gee (Hugh Gee's son) and Quest Securities, Inc. (Terrence Gee's new employer), were liable as successors in interest to respondents Hugh Gee & Company and Hugh Gee.

Claimants sought a make-whole award consisting of damages equal to the amount invested (approximately \$84,000) plus interest and attorneys' fees. Claimants did not seek rescission of the WNC purchase. Claimants also sought punitive damages.

Respondents requested dismissal of the claims arising out of event more than six years prior to submission of the Claim under NASD Code of Arbitration Section 10304. Respondents Quest Securities and Terrence Gee requested dismissal of all claims under NASD Code of Arbitration Section 10101. The Motion under Section 10304 was preliminarily granted in part and then

withdrawn by the NASD and considered by the panel at the hearing. The Motion under Section 10101 was considered by the panel at the hearing.

Respondent Quest Securities filed an answer alleging that Claimants had never purchased or sold any securities through it and that its sole contact with Claimants arose from the transfer of mutual fund accounts to it when Respondent Terrence Gee became licensed with Quest. Respondent Terrence Gee filed an answer alleging that he had not participated in the sales of CET or WNC to Claimants and that the sales were made by Hugh Gee. He alleged that he had joined Quest Securities in February 1995.

Respondents Hugh Gee & Co., Hugh Gee and Terrence Gee alleged that Claimants had income of \$23,400,265.20 and net worth of \$196,700,320k when they purchased CET, wanted income and a real estate investment. They alleged that CET had a good record of producing income, low leverage, and provided diversification from Claimants' mutual fund investments. They alleged that Claimants had income of \$39,540 and net worth of \$291,000 when they purchased WNC which generated between \$5000 and \$6000 in tax credits each year. They denied that the investments were 'speculative.' Respondents also alleged that the statutes of limitations had run.

#### **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 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. Respondents' Motion to Dismiss is granted as to all CET claims;
2. Quest Securities and Terrence Gee's Motion to Dismiss is granted;
3. All other claims including the WNC claims are denied;
4. Claimants request for punitive damages is denied;
5. Each side to bear their own costs and attorneys fees.

**FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were 11 sessions x \$500 plus one pre-hearing conference x \$300 = \$5,800 in forum fees. Pursuant to Rule 10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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 Rule 10332(c) of the Code of Arbitration Procedure, the claimants and Hugh Gee, individually, shall divide the forum fees 50%-50%.

**Total Fees**

11 Hearing Sessions @ \$500.00 =	\$5,500.00
1 Pre-hearing Conf. @ \$300.00 =	\$ 300.00
<b>Total</b>	<b><u>\$5,800.00</u></b>

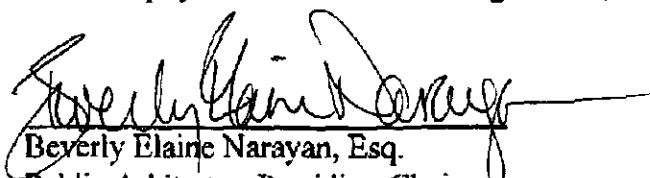
Claimant's 1/2 share	\$2,900.00
Claimant's credit for deposit	<u>\$ 500.00</u>
Claimant's balance	\$2,400.00

Hugh Gee's 1/2 share/Balance	<u>\$2,900.00</u>
------------------------------	-------------------

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. by the Claimant Leroy E. Nedom and Gwendolyn C. Nedom.

Pursuant to Rule 10333 of the Code, the NASD shall retain the member surcharge fee in the amount of \$300 previously paid by Quest Securities.

**Fees are payable to the NASD, Regulation, Inc.**

  
Beverly Elaine Narayan, Esq.  
Public Arbitrator, Presiding Chair

Dated:

May 2, 1997

\_\_\_\_\_  
Laurel Littman Gothelf, MPH  
Public Arbitrator

\_\_\_\_\_  
Ruth V. Glick, Esq.  
Industry Arbitrator

Date served: 5/5/1997

**FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were 11 sessions x \$500 plus one pre-hearing conference x \$300 = \$5,800 in forum fees. Pursuant to Rule 10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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 Rule 10332(c) of the Code of Arbitration Procedure, the claimants and Hugh Gee, individually, shall divide the forum fees 50%-50%.

**Total Fees**

11 Hearing Sessions @ \$500.00 =	\$5,500.00
1 Pre-hearing Conf. @ \$300.00 =	\$ 300.00
<b>Total</b>	<b><u>\$5,800.00</u></b>

Claimant's 1/2 share	\$2,900.00
Claimant's credit for deposit	<u>\$ 500.00</u>
Claimant's balance	\$2,400.00

Hugh Gee's 1/2 share/Balance	<u>\$2,900.00</u>
------------------------------	-------------------

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. by the Claimant Leroy E. Nedom and Gwendolyn C. Nedom.

Pursuant to Rule 10333 of the Code, the NASD shall retain the member surcharge fee in the amount of \$300 previously paid by Quest Securities.

**Fees are payable to the NASD, Regulation, Inc.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Beverly Elaine Narayan, Esq.  
Public Arbitrator, Presiding Chair

*Laurel Littman Gothelf, MPH*  
\_\_\_\_\_  
Laurel Littman Gothelf, MPH  
Public Arbitrator

5-2-97

\_\_\_\_\_  
Ruth V. Glick, Esq.  
Industry Arbitrator

Date served: 5/5/1997

**FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were 11 sessions x \$500 plus one pre-hearing conference x \$300 = \$5,800 in forum fees. Pursuant to Rule 10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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 Rule 10332(c) of the Code of Arbitration Procedure, the claimants and Hugh Gee, individually, shall divide the forum fees 50%-50%.

Total Fees	
11 Hearing Sessions @ \$500.00 =	\$5,500.00
1 Pre-hearing Conf. @ \$300.00 =	\$ 300.00
Total	<u>\$5,800.00</u>

Claimant's 1/2 share	\$2,900.00
Claimant's credit for deposit	<u>\$ 500.00</u>
Claimant's balance	\$2,400.00

Hugh Gee's 1/2 share/Balance	<u>\$2,900.00</u>
------------------------------	-------------------

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. by the Claimant Leroy E. Nedom and Gwendolyn C. Nedom.

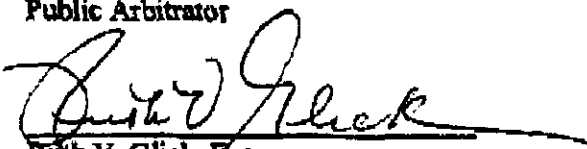
Pursuant to Rule 10333 of the Code, the NASD shall retain the member surcharge fee in the amount of \$300 previously paid by Quest Securities.

Fees are payable to the NASD, Regulation, Inc.

Dated:

\_\_\_\_\_  
Beverly Elaine Narayan, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Laurel Littman Gothelf, MPH  
Public Arbitrator

  
\_\_\_\_\_  
Ruth V. Glick, Esq.  
Industry Arbitrator

\_\_\_\_\_  
5/2/97

Date served: 5/5/1997