

DLS

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Allan H. Galbreath, M.D.,
individually and on behalf of
Allan H. Galbreath, M.D. Inc.,
a California corporation;
Dorothy J. Ertl; and Sue C.
Moore

Arbitration
No. 96-00927

Name of Respondent(s)

Sutro & Co., Inc. and
Russell Godt

REPRESENTATION

For Claimants: Louis J. Anapolsky, Esq., Knox, Lemmon, Anapolsky &
Sheridan, Sacramento, California

For Respondents: Gilbert R. Serota, Esq., Howard, Rice, Nemerovski,
Canady, Falk & Rabkin, San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 5, 1996

Claimants' Submission Agreements signed as follows:

Allan H. Galbreath: March 14, 1996
Allan H. Galbreath MD, Inc.: March 14, 1996
Dorothy J. Ertl: March 14, 1996
Sue C. Moore: March 14, 1996

Joint Statement of Answer filed by Respondents: May 30, 1996

Respondent Sutro & Co., Inc.'s Submission Agreement signed: April
29, 1996

Respondent Russell Godt did not file a Submission Agreement.
However, he appeared at the evidentiary hearing and is subject to

NASD Regulation, Inc. (NASDR) jurisdiction in accordance with Section 10301 of the NASDR Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

December 12, 1996 (one session)

Hearing Date(s)/Session(s):

August 26, 1997 (two sessions)
August 27, 1997 (two sessions)
August 28, 1997 (two sessions)
August 29, 1997 (two sessions)
November 3, 1997 (two sessions)
November 4, 1997 (two sessions)
November 5, 1997 (two sessions)
November 6, 1997 (two sessions)
January 8, 1998 (two sessions)
January 9, 1998 (two sessions)

Hearing Location:

San Francisco, California

CASE SUMMARY

Claimants alleged the following causes of action with respect to investments in various securities, including VMS products: 1) Breach of Fiduciary Duty - Intentional Misrepresentation; 2) Breach of Fiduciary Duty - Negligent Misrepresentation; 3) Breach of Fiduciary Duty - Negligent Research; 4) Breach of Fiduciary Duty - Failure to Supervise Employees; 5) Breach of Fiduciary Duty - Suitability and Over-Concentration; and 6) Negligence - Failure to Properly Research, Supervise and Manage.

Respondents denied each and every allegation of wrongdoing in Claimants' Statement of Claim and alleged that each and every claim is barred by all applicable statutes of limitation. Respondents further alleged that Claimants bring their Claim to NASDR over five years after they transferred their accounts from Sutro & Co., Inc. (Sutro) and nearly seven years after they invested in shares of the disputed securities. Respondents further alleged that Claimants' claims are hindsight-based claims improperly intended to hold Claimants' broker responsible for shortcomings in the performance of investments years after they were purchased. Respondents further alleged that Claimants' focus on their investments in VMS Short Term Income Trust and VMS Strategic Land Fund II is particularly misplaced; both of these securities were the subject of a class action which concluded several years ago in a settlement in which Claimants may have participated; that Sutro was not an underwriter of these issues and had nothing to do with the management or performance of the VMS REITs; and that Sutro was not even named in the class action. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested judgment against Respondents, and each of them, as follows:

First Cause of Action:

1. For general damages according to proof;
2. For special damages according to proof;
3. For punitive or exemplary damages according to proof;
4. For reasonable attorney's fees according to proof;
5. For costs of suit; and
6. For such other and further relief as the panel deems just and proper.

Second Cause of Action:

1. For general damages according to proof;
2. For special damages according to proof;
3. For reasonable attorney's fees according to proof;
4. For costs of suit; and
5. For such other and further relief as the panel deems just and proper.

Third Cause of Action:

1. For general damages according to proof;
2. For special damages according to proof;
3. For reasonable attorney's fees according to proof;
4. For costs of suit; and
5. For such other and further relief as the panel deems just and proper.

Fourth Cause of Action:

1. For general damages according to proof;
2. For special damages according to proof;
3. For reasonable attorney's fees according to proof;
4. For costs of suit; and
5. For such other and further relief as the panel deems just and proper.

Fifth Cause of Action:

1. For general damages according to proof;
2. For special damages according to proof;
3. For reasonable attorney's fees according to proof;
4. For costs of suit; and
5. For such other and further relief as the panel deems just and proper.

Sixth Cause of Action:

1. For general damages according to proof;
2. For special damages according to proof;
3. For reasonable attorney's fees according to proof;
4. For costs of suit; and
5. For such other and further relief as the panel deems just and proper.

Respondents requested that Claimants' claims be dismissed and requested an award made in favor of Respondents for their costs and attorneys fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 NASDR.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, including the positions of the parties with respect to Respondents' Motion to Dismiss, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The panel decided it does have jurisdiction to determine the merits of the suitability of the investments made after November, 1985 on behalf of each of the Claimants and therefore, Respondents' motions to dismiss Claimants' claims on this ground and on the grounds of the statutes of limitations, are denied. However, the panel is unable to determine that any damages were suffered by any Claimant because Claimants failed to discharge their burden of proof on this issue. Accordingly, the panel determined that all claims by Claimants, including the claims for punitive and exemplary damages are dismissed.

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall retain the hearing session deposit previously deposited by the Claimants. Forum fees shall be split between the parties and are calculated as follows:

One pre-hearing session @ \$750.00/session	=	\$ 750.00
Twenty hearing sessions @ \$750.00/session	=	\$15,000.00
Total fees assessed	=	\$15,750.00
Claimants' share (50%)	=	\$ 7,875.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$ 7,125.00
Respondents' share, jointly and severally (50%)	=	\$ 7,875.00
Balance due	=	\$ 7,875.00

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

Name	Public / Industry
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Albert Loeb Boasberg, Esq.	Public Arbitrator
Laurel Littman Gothelf, MPH	Public Arbitrator
Thomas W. Borden	Industry Arbitrator

Concurring Arbitrators' Signatures

Albert Loeb Boasberg, Esq.

Laurel Littman Gothelf, MPH

Thomas W. Borden

Date of Decision: _____

Date Served: 02/10/98

One pre-hearing session @ \$750.00/session	=	\$ 750.00
Twenty hearing sessions @ \$750.00/session	=	\$15,000.00
Total fees assessed	=	\$15,750.00
Claimants' share (50%)	=	\$ 7,875.00
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Respondents' share, jointly and severally (50%)	=	\$ 7,875.00
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Laurel Littman Gothelf, MPH

Laurel Littman Gothelf, MPH

Thomas W. Borden

Date of Decision: 1-27-98

Date Served: 02/10/98