

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Carolyn & Fred Rankin

96-03934

Names of Respondents

A.S. Goldmen & Company, Inc.
Sheldon Wilson
Floyd Wilmoth

REPRESENTATION

For Claimants: Dan A. Druz, Esq. of Manasquan, New Jersey. Fred Rankin did not appear at the evidentiary hearing.

For Respondent A.S. Goldmen & Company, Inc. ("Goldmen"): Lewis Goldberg, Esq. of Redding, Connecticut.

Respondents Sheldon Wilson ("Wilson") and Floyd Wilmoth ("Wilmoth") appeared pro se.

CASE INFORMATION

Statement of Claim filed: September 4, 1996.

Claimants' Submission Agreement signed on: October 7, 1996.

Statement of Answer filed by Respondent Goldmen on: February 25, 1997.

Respondent Goldmen's Submission Agreement signed on: December 4, 1996.

Respondent Wilson's Statement of Answer filed on: March 6, 1997.

Respondent Wilson's Submission Agreement signed on: March 21, 1997.

Respondent Wilmoth's Statement of Answer filed on: April 3, 1997.

Respondent Wilmoth did not file an executed Submission Agreement.

HEARING INFORMATION

Four pre-hearing conferences were conducted with the Chairperson on May 9, 1997, December 1 and 10, 1997 and January 6, 1998. In addition, a pre-hearing conference was conducted with the arbitration

panel on January 2, 1998. The evidentiary hearing was conducted on January 13, 14 and 15, 1998 in Tampa, Florida for a total of six sessions.

CASE SUMMARY

Claimants alleged their case rested on the following four issues:

unauthorized trading on all trades resulting from Respondents' failure to obtain Mrs. Rankin's consent at any time regarding any of the transactions prior to November of 1995;

unsuitability resulting from Respondents' failure to communicate with Mrs. Rankin regarding her investment experience, goals and wherewithal;

negligent supervision resulting from Respondents' creation of an atmosphere in which a failure to follow industry rules was permitted and even condoned notwithstanding the myriad of complaints leveled against Respondent Goldmen; and,

a failure to execute sell orders in the account in the November and December of 1995 period.

Respondents maintained that Claimants failed to prove, but rather simply assumed, that the products in question were "speculative." Respondents next maintained that the level of risk of the products was consistent with Claimants' financial profile as well as the information regarding Carolyn Rankin provided both in her new account application as well as when she was "re-qualified" by Floyd Wilmoth when he took over management of the account and the risk level of the products was consistent with the risk level of the products purchased in Carolyn Rankin's Boston Group account, opened upon the closing of her Goldmen account. Respondents next maintained that Floyd Wilmoth spoke with Carolyn Rankin prior to each transaction in her account and there was no trading on margin without authorization as Carolyn Rankin executed a margin agreement. Respondents further asserted that the failure to supervise allegation is derivative in nature and can only be found to exist in the event liability is found under some other theory.

RELIEF REQUESTED

Claimants requested in their Statement of Claim actual damages of between \$50,000.00 and \$100,000.00; costs, expenses and disbursements, including attorneys' fees in pursuing this arbitration proceeding; punitive damages in the amount of \$50,000.00 and any further relief deemed just and proper by the arbitration panel.

Respondents requested that all claims be dismissed in their entirety and that Claimants be assessed all fees in connection with this arbitration, including attorneys' fees. Respondents requested further relief as deemed proper by the arbitrators.

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 original(s) remain on file with NASD Regulation, Inc.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing

submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondent Goldmen is liable and shall pay to the Claimant Carolyn Rankin the sum of \$19,941.00 plus pre-judgment interest in the sum of \$3,988.20 for a total due of \$23,929.20.

All claims against Respondents Wilson and Wilmoth are dismissed.

The Claimants' request for punitive damages is denied.

Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$6,450 (six sessions x \$750.00 plus four pre-hearing conferences-Chairperson \$1,200.00 plus one pre-hearing conference-panel \$750.00) are assessed as follows:

Claimant is assessed the sum of \$750.00 less the \$750.00 on deposit in full satisfaction thereof.

Respondent Goldmen is assessed the sum of \$5,700.00.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/S/

Stanley Lampert, Esq.

Public

/S/

Alexandra L. Bolton, C.P.A.

Public

/S/

Scott A. Spencer

Industry

Date of Decision: February 6, 1998