

N.A.S.D.R. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Don and Nancy Richards

94-04112

Name of Respondents

A.S. Goldmen & Co., Inc.
Joseph W. Donohue
Brian M. Duffy

REPRESENTATION

Claimants Don and Nancy Richards ("Claimants") were represented by Peter A. Vogt, Esq., Gollatz, Griffin & Ewing, Philadelphia, PA.

Respondent Joseph Donohue ("Donohue") was represented by Dan A. Druz, Esq. Sea Girt, NJ.

Respondents Brian M. Duffy ("Duffy") and A.S. Goldmen & Co., Inc. ("A.S. Goldmen") were represented by Phoebe A. Wilkinson, Esq. Chadbourne & Parke, New York, NY.

CASE INFORMATION

The Statement of Claim was filed October 5, 1994.

The Amended Statement of Claim was filed July 3, 1996

Claimant's Submission Agreement was signed on September 21, 1994.

A Joint Statement of Answer was filed by Respondents Donohue, Duffy and A.S. Goldmen (collectively "Respondents") on February 16, 1995.

A Joint Answer to the Amended Statement of Claim was submitted by Respondents A.S. Goldmen and Duffy was filed July 18, 1996.

Respondent A.S. Goldmen's Submission Agreement was signed on February 16, 1995.

Respondent Duffy's Submission Agreement was signed on May 12, 1995.

Respondent Donohue's Submission Agreement was signed on May 8, 1995.

HEARING INFORMATION

Hearing Dates/Sessions: May 13, 1996/two sessions
May 14, 1996/two sessions

Hearing Location: NASD District Office
Philadelphia, PA

Hearing Dates/Sessions: July 9, 1996/two sessions
July 10, 1996/two sessions

Hearing Location: Doubletree Hotel
Philadelphia, PA

CASE SUMMARY

Claimants Don and Nancy Richards allege that they are unsophisticated investors who are nearing retirement age. Further, they allege that, in reliance on the material misrepresentations and omissions of material facts made by Respondents Brian Duffy and Joseph Donohue, Claimants purchased various securities from Respondent A.S. Goldmen. The securities at issue, Medicis Pharmaceutical, News Communications, Inc. and Princeton Dental, were unsuitable investments for Claimants. Respondents did not act in good faith or exercise reasonable care in recommending these securities to the Richards. These securities, unbeknownst to Claimants, were highly speculative securities in which A.S. Goldmen was a market maker. This information was known to Respondents but deliberately withheld by them from Claimants. The money invested by Claimants with Respondents in these securities was money that they had earmarked for retirement and was not money that they wanted to invest or would have invested in high-risk securities. Claimants losses in these stocks totalled approximately \$75,000. Claimants allege that Respondents are liable for breach of fiduciary duty, fraudulent misrepresentations and omissions, recommending unsuitable investments, and for breach of the Pennsylvania Unfair Trade Practices statute.

Respondents denied all material allegations contained in the Statement of Claim. Respondents maintained that all purchases made on behalf of Claimants were made after consultation with Claimants and upon Claimants' instructions and approval. Respondents maintained that full disclosure was made to Claimants and all transactions were authorized with Claimants' informed decisions. Respondents denied that Claimants ever informed Respondents that Claimants' objectives were conservative or that Claimants were unable to sustain losses. Respondents maintained that all material facts were disclosed to Claimants and that A.S. Goldmen was a market maker in one three stocks. Respondents further maintained that Claimants' account was not churned or traded excessively. Respondents raised the affirmative defenses of failure to state a cause of action upon which relief can be granted, failure to set a calculation of damages, failure to mitigate damages, bad faith by Claimants, as well as unclean hands, waiver, ratification and estoppel. Respondents maintained that all transactions were authorized by Claimants and that any losses sustained by Claimants were the result of market conditions over which Respondents had no control.

RELIEF REQUESTED

Claimants seek out-of-pocket damages of \$74,300.80, lost opportunity damages of \$82,840, interest, return of commissions, treble damages pursuant to the Pennsylvania Unfair Trade Practices Act and punitive damages. They also ask that all costs be taxed against Respondents.

Respondents requested that the Statement of Claim be dismissed in its entirety and that all costs of this arbitration be assessed to Claimants.

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 originals remain on file with the NASD.

After consideration of Respondents' Motion To Dismiss at the end of Claimants' case, the panel denied the Motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents A.S. Goldmen, Inc. and Joseph W. Donohue are liable to and shall pay to Claimants \$60,053.80 plus interest of \$5,054.11 for a total of \$65,127.91.
2. That all claims against Brian M. Duffy are dismissed.
3. That the request for treble damages is denied.
4. That the request for punitive damages is denied.
5. That each party shall pay its own costs and expenses.
6. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Section 10332(c) (previously Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

8 Sessions x \$750.00 = \$6,000.00


Forum Fees assessed against Respondents A.S. Goldmen, Inc. and Joseph W. Donohue, jointly and severally. Respondents A.S. Goldmen, Inc. and Joseph W. Donohue are jointly and severally liable to and shall reimburse Claimant for the \$750.00 hearing session deposit previously submitted to the NASDR. Therefore, Respondents A.S. Goldmen, Inc. and Joseph W. Donohue have a net assessment due to the NASDR for Forum Fees of \$5,250.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

8/14/96



Joseph L. Farrell, Jr., Presiding
Public Arbitrator

Michael D. Soifer
Public Arbitrator

DATE

DISSENTING ARBITRATOR'S SIGNATURE

Frank T. Salera
Public Arbitrator


Date Decision Served by NASD: August 15, 1996

DATE

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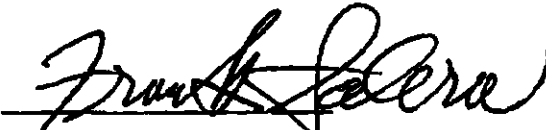
Joseph L. Farrell, Jr., Presiding
Public Arbitrator

Michael D. Soifer
Public Arbitrator

DATE

DISSENTING ARBITRATOR'S SIGNATURE

8-2-96



Frank T. Salera
Public Arbitrator

Date Decision Served by NASD: August 15, 1996