

**EXPLAINED AWARD: LEWIS v. GOLDMAN SACHS & CO.,** FINRA ID [#14-03186](#) (Philadelphia, PA, 2/24/17). *The Panel here gives a detailed explanation of its decision to hold a broker-dealer liable to one customer, but not to another, related one, and to award substantially less than the customer requested.* Thomas Lewis, Jr. (whom the Panel calls “Tim Lewis,” presumably his nickname) and Lewis Family Limited Partnership, LP (“FLP”) asserted claims for unsuitability, professional negligence, breach of fiduciary duty, and *respondeat superior* against Goldman Sachs (“Goldman”) only. Claimants initially requested \$2.4 million and raised the ante to a more precise \$3,684,329 at the close of the hearing. The Panel denied Goldman’s motion for directed verdict.

### **Diverging Investment Outlooks**

The Panel begins its Opinion with a brief history of the two accounts at question and the views of the investors who held them. Initially, Tim Lewis and FLP shared “similar investment outlooks and objectives, specifically, probable market declines often due to looming political events and desire for income and professed desire for low-risk investments and an affinity for keeping First Energy stock.” By May 8, 2013, however, Tim Lewis had revealed that he no longer believed that “there would be a looming market decline just over the horizon, a core theme held by his adult children.” Goldman broker David Smith, who was aware of Tim’s change of heart, continued to carry out the investment objectives of those children, who controlled the FLP account, since Tim did not have an interest in FLP after 2011.

### **Questions of Liability**

The Panel focuses its liability analysis on the issue of suitability. It rejects FLP’s claims in their entirety and finds that Goldman’s “strategy to use the First Energy stock as an account asset is reasonable, whether or not an investment professional labels this fact pattern ‘covered’ options or ‘uncovered’ options.” However, Goldman violated the “Know Your Customer” Rule with respect to Tim Lewis, because it disregarded the fact that he no longer agreed with the existing investment strategy. “Therefore, the losses from these continuing investments, specifically selling call options in Tim Lewis’ discretionary GOAS subaccount, are solely due to Goldman’s inaction necessitating restitution to Tim Lewis.” Moreover, the Panel finds, the fault is Goldman’s, since “there is no basis to find anyone acted outside of the Respondent’s sphere of employment.”

### **Dueling Experts and Damage Calculations**

Turning to the amount Goldman owes Tim Lewis, the Panel finds his expert’s “methodology to be too speculative as to what the client would have invested in, had the client not incurred account losses.” Instead, it adopts the measure suggested by a Goldman expert, to wit: “the ‘difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of his purchase or sale in the absence of the act or transaction, plus interest at the legal rate’” (six percent per annum in Pennsylvania). Taking into account all of the gains and losses from May 2013 until September 2014, when Tim Lewis moved his account away from Goldman (which are set out in detail in a spreadsheet on page 6 of the Award), the Panel finds a net loss of \$42,223, which it awards to Tim Lewis. Finally, following the American Rule, the Panel awards no attorney fees or costs.

*(ed: \*By way of full disclosure, the Award cites the testimony of Ross Tulman of Trade Investment Analysis Group, Columbus, OH, who served as one of Goldman's experts in*

*this case. Mr. Tulman is a member of SAC's Board of Editors. \*\*The Panel explanation makes no mention of Claimants' requests for punitive damages or reimbursement of commissions, neither of which is awarded. \*\*\*Since most explained Awards arise in the context of successful expungement requests by brokers and, to a lesser extent, pre-hearing adjudications, both of which call for at least a brief explanation, Awards explaining the award of damages are less common. With respect to explained Awards generally, they accounted for 9% (384/4159) of all Customer-Member Awards issued since the beginning of 2010, but only 5% (58/1266) of those in which the customer recovered damages.)*