

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Orthopedic & Sports Associates of Long Island, P.C. Profit Sharing Plan, (Claimant) vs.  
Randall S. Appel, Appel Financial Planning, Ltd., and Strategic Assets, Inc., (Respondents)

Case Number: 00-03581

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Orthopedic & Sports Associates of Long Island, P.C. Profit Sharing Plan, hereinafter referred to as "Claimant": Robert N. Cohen, Esq., Weinstein, Kaplan & Cohen, P.C., Garden City, NY.

Respondents, Randall S. Appel ("Appel"), Appel Financial Planning, Ltd. ("AFP"), and Strategic Assets, Inc. ("Strategic"), hereinafter collectively referred to as "Respondents": John J. Nigro, Esq., a sole practitioner, Woodbury, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 16, 2000.

Claimant signed the Uniform Submission Agreement: August 7, 2000.

Statement of Answer filed by Respondents on or about: October 4, 2000.

Appel signed the Uniform Submission Agreement: October 4, 2000.

AFP signed the Uniform Submission Agreement: October 4, 2000.

Strategic signed the Uniform Submission Agreement: October 4, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty and unsuitability. Claimant's claim involved a variety of corporate bonds, preferred stocks, and limited partnerships.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim is barred by the doctrines of laches and waiver; at all times Claimant was an experienced and knowledgeable investor and had knowledge of and assumed the risks incident to investing in securities, and any losses sustained by Claimant were caused by and arose out of Claimant's assumption of such risks; Claimant knew and understood the risks associated with the investments made in its account and represented itself as willing and able to assume those

risks; Claimant authorized and directed the execution of all transactions in its account and accordingly is estopped from claiming any losses with respect to these transactions; Claimant authorized and/or ratified the transactions in its account; Respondents acted in good faith and did not directly or otherwise induce the alleged act or acts, if any, constituting alleged violations of law; the Statement of Claim does not show any wrongdoing by Respondents entitling Claimant to relief of any kind; the Statement of Claim must be denied due to Claimant's own culpable conduct and negligence; the Statement of Claim is barred, in whole or in part, by the applicable statutes of limitations; the Statement of Claim must be denied due to Claimant's failure to mitigate any alleged damages; Claimant is barred from asserting any claim for any improper conduct to the extent that no objection was made upon Claimant's receipt reports and statements reflecting the activity in its accounts; there is no basis in law or fact to award punitive damages or litigation expenses in this case; Respondents at all times acted in good faith and there is no evidence of the extraordinary level of maliciousness or intentional misconduct necessary for Claimant to recover the unusual award of punitive damages; at all times Claimant's trustees were fiduciaries and agents of Claimant and acted with its express or implied authority; and Claimant is anticipatory and cannot at this juncture prove purported losses or damages.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$266,550.00
Punitive Damages	\$ 50,000.00
Attorneys' Fees	\$ 10,000.00
Forum Fees	\$ 1,425.00
Witness and Production Fees	\$ 5,000.00

Respondents requested that the claims against them be dismissed with prejudice, and that the costs of this arbitration be assessed against Claimant together with such other and further relief as the Panel deems appropriate.

#### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$140,237.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Strategic Assets, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: January 10, 2001 1 session	
Six (6) Hearing sessions x \$1,125.00	= \$6,750.00
Hearing Dates: April 24, 2001 2 sessions	
April 25, 2001 2 sessions	
April 30, 2001 1 session	
May 2, 2001 1 session	
Total Forum Fees	= \$7,875.00

The Panel has assessed all of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
<u>Refund Due Claimant</u>	= \$1,125.00

*As stated in the "Award" section above, Respondents are jointly and severally liable and shall reimburse Claimant for the \$300.00 filing fee.*

2. Strategic be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,875.00
<u>Total Fees</u>	= \$7,875.00
<u>Less payments</u>	= \$ 124.75
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$7,750.25

All balances are due and payable to NASD Dispute Resolution, Inc.

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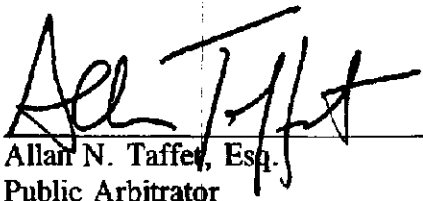
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**ARBITRATION PANEL**

Judith Joseph, Esq.	-	Public Arbitrator, Presiding Chair
Allan N. Taffet, Esq.	-	Public Arbitrator
Tama Traberman	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Allan N. Taffet, Esq.  
Public Arbitrator

Signature Date \_\_\_\_\_

\_\_\_\_\_  
Tama Traberman  
Industry Arbitrator

Signature Date \_\_\_\_\_

**Dissenting Arbitrator's Signature**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Judith Joseph, Esq.  
Public Arbitrator, Presiding Chair

Signature Date \_\_\_\_\_

\_\_\_\_\_  
June 1, 2001  
Date of Service (For NASD office use only)

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**ARBITRATION PANEL**

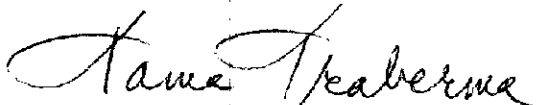
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Allan N. Taffet, Esq.  
Public Arbitrator

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Signature Date

  
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Tama Traberman  
Industry Arbitrator

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Signature Date

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Allan N. Taffet, Esq.  
Public Arbitrator

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Signature Date

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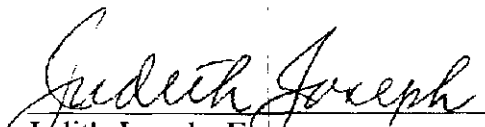
Tama Traberman  
Industry Arbitrator

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Signature Date

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Judith Joseph, Esq.  
Public Arbitrator, Presiding Chair

5/23/01  
Signature Date

June 1, 2001  
Date of Service (For NASD office use only)