

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

James Perrone, Cynthia J. Harty, James Perrone IRA, and Cynthia J. Harty IRA, (Claimants)  
vs. Glenn Michael Financial, Inc. and Stephen Giannantonio, (Respondents)

Case Number: 01-01566

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, James Perrone ("Perrone"), Cynthia J. Harty ("Harty"), James Perrone IRA ("Perrone IRA"), and Cynthia J. Harty IRA ("Harty IRA"), hereinafter collectively referred to as "Claimants": Anthony M. Abraham, Esq., a sole practitioner, New York, NY.

Respondents, Glenn Michael Financial, Inc. ("GMF") and Stephen Giannantonio ("Giannantonio"), hereinafter collectively referred to as "Respondents": Barry R. Temkin, Esq., Jacobowitz, Garfinkel & Lesman, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 29, 2001.

Perrone signed the Uniform Submission Agreement: April 12, 2001.

Harty signed the Uniform Submission Agreement: April 12, 2001.

Perrone IRA signed the Uniform Submission Agreement: April 12, 2001.

Harty IRA signed the Uniform Submission Agreement: April 12, 2001.

Joint Statement of Answer filed by Respondents on or about: July 9, 2001.

GMF did not sign a Uniform Submission Agreement.

Giannantonio signed the Uniform Submission Agreement: August 14, 2001.

**CASE SUMMARY**

Claimants asserted the following causes of action: conversion by fraud; unsuitability; churning; breach of fiduciary duty; fraud; acting without authority and violating instructions; and failure to supervise. Claimants' claim involved investments in American Spot Trading, LLC, Matthews Studio Equipment Group, Fidelity Holdings, Synergy Brands, Inc., ACTV Inc., 5th Avenue Channel Corp., and Ashford.com.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Perrone was a sophisticated investor who fully understood the risks of all investments alleged in the Statement of Claim; Claimants' claims are barred by the equitable doctrines of estoppel, laches, and unclean hands; Claimants failed to mitigate their damages; Claimants' claims are barred to the extent of their comparative negligence; Claimants assumed the risks associated with the transactions of which they now complain; and Claimants have failed to join necessary parties who may not be subject to the jurisdiction of this tribunal.

### **RELIEF REQUESTED**

Claimants requested:

- a. Compensatory damages in the amount of \$150,000.00;
- b. Punitive damages in the amount of \$250,000.00;
- c. Pre-award and post-award interest at the maximum rate allowed by law from the date of the original investments; and
- d. The costs of forum, attorneys' fees minimally in the sum of \$50,000.00, experts' fees and arbitrators' fees, and all other costs deemed to be reasonable, all in the sum minimally of \$60,000.00.

Respondents requested that the Statement of Claim be denied in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On July 25, 2002, Claimants made a Motion to Amend their Statement of Claim increasing the total amount of compensatory damages sought to \$254,000.00. The Panel reserved decision on this Motion until deliberation. After due consideration, the Panel has denied Claimants' Motion to Amend.

GMF did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. GMF and Giannantonio be and hereby are jointly and severally liable for and shall pay to Harty IRA the sum of \$6,500.00 as compensatory damages.
2. The claims of Perrone, Harty, and Perrone IRA are hereby denied in their entirety.
3. Claimants' requests for punitive damages and attorneys' fees are hereby denied.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution 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, Glenn Michael Financial, 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: March 25, 2002	1 session

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 30, 2001	1 session

Eighteen (18) Hearing sessions x \$1,125.00 = \$20,250.00

Hearing Dates:	April 10, 2002	2 sessions
	April 11, 2002	2 sessions
	April 18, 2002	2 sessions
	April 19, 2002	2 sessions
	June 17, 2002	2 sessions
	June 18, 2002	2 sessions
	July 29, 2002	2 sessions
	July 30, 2002	2 sessions
	July 31, 2002	2 sessions

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Total Forum Fees = \$21,825.00

1. The Panel has assessed \$10,912.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$10,912.50 of the forum fees jointly and severally against Respondents.

#### Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$10,912.50
Total Fees	= \$11,212.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 9,787.50

2. GMF be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ 579.00
Balance Due NASD Dispute Resolution	= \$ 4,021.00

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

<u>Forum Fees</u>	= \$10,912.50
Total Fees	= \$10,912.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$10,912.50

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.


**ARBITRATION PANEL**

Harold S. Elovich, Esq.  
Russell Stine Heckler, Esq.  
Philip W. Gaffney

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public 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.

  
Harold S. Elovich, Esq.  
Public Arbitrator, Presiding Chair

8/19/02  
Signature Date

Russell Stine Heckler, Esq.  
Public Arbitrator

                      
Signature Date

Philip W. Gaffney  
Non-Public Arbitrator

                      
Signature Date

August 29, 2002  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**


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Russell Stine Heckler, Esq.	-	Public Arbitrator
Philip W. Gaffney	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date

  
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Russell Stine Heckler, Esq.  
Public Arbitrator

  
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Public Arbitrator, Presiding Chair

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Signature Date


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Russell Stine Heckler, Esq.  
Public Arbitrator

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Signature Date

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Philip W. Gaffney  
Non-Public Arbitrator

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