

## N.A.S.D. AWARD

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, New York 10004

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration BetweenName of Claimant

David Feinsilver

90-02415

Name of Respondents

Pittock Financial Corporation  
RAFCO Financial Corp.  
RAF Financial Corporation  
Wally Sotter

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REPRESENTATION

For Claimant: Morgan W. Bentley, Esq.

For Respondents Pittock Financial Corporation, RAFCO Financial Corporation  
and RAF Financial Corporation: Gene R. Thornton of Hopper Kanouff

For Respondent Wally Sotter: Wally Sotter represented himself.

CASE INFORMATION

Statement of Claim filed: August 20, 1990.

Claimant's Submission Agreement signed on: August 29, 1990.

Joint Statement of Answer filed by Respondents, Pittock Financial  
Corporation, RAFCO Financial Corporation and RAF Financial Corporation on:  
December 17, 1990.Pittock Financial Corporation, RAFCO Financial Corporation and RAF Financial  
Corporation are all the same company which is currently known as RAF  
Financial Corporation (collectively, herein, "RAF").Respondent, RAF Financial Corporation's Submission Agreement signed on:  
December 14, 1990.

Statement of Answer filed by Respondent Wally Sotter on January 2, 1991. Respondent Wally Sotter did not execute a submission agreement; however, he did file an answer and represented himself at the hearing. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the Presiding Arbitrators exercised their jurisdiction over Respondent Wally Sotter ("Sotter").

#### HEARING INFORMATION

Hearing Dates/Sessions: October 8, 1991-Two Sessions  
October 9, 1991-Two Sessions

Hearing Location: New York City, NASD Office

#### CASE SUMMARY

Claimant, David Feinsilver ("Claimant") alleged that Sotter, while under the supervision and control and acting on behalf of RAF, made knowingly false and misleading statements of material facts regarding the value and future performance of Greenwich Pharmaceutical, Inc. ("Greenwich"). Claimant alleged that Sotter made these statements in order to induce Claimant to purchase Greenwich and that Claimant purchased 10,000 shares. Claimant alleged that his losses and damages are a direct and proximate result of Respondents fraudulent misrepresentations and omissions of material facts. Claimant alleged that the Respondents are liable to the Claimant for damages including the losses and interest since October 1987 and punitive damages as a result of the Respondents fraudulent conduct in violation of the common law, Federal Securities laws and NASD Rules, standards and practices.

Respondents maintained that Claimant was a sophisticated investor who frequently purchased stocks upon "tips" and rumors. Respondents maintained that Claimant, as an investor, liked to invest in speculative securities and that he understood the risk of investing in securities of that type. Respondents maintained that Claimant is seeking an outlet for his "buyer's remorse" resulting from a stock purchase that was not as profitable as he had hoped. Respondents maintained Sotter informed Claimant that Greenwich was close to entering into several domestic and foreign marketing and distribution agreements under which its product would be sold and distributed. Respondents maintained that, at no time, did Sotter or RAF make any specific factual statements regarding the value of the stock or that any marketing agreement was definitely in place. Respondents maintained that Claimant elected to liquidate his positions in Greenwich because of the large margin calls he was required to cover. Respondents maintained that they are not responsible for the losses sustained by Claimant when he overextended himself in an unstable market. Respondents maintained that Claimant is not entitled to punitive damages as neither RAF nor Sotter entered into any willful or wanton conduct with respect to the Claimant.

RELIEF REQUESTED

Claimant requested: Compensatory damages in the amount of \$113,000; and punitive damages of in excess of \$339,000.

Respondent RAF requested: That Claimant's claim be dismissed in its entirety and that it be awarded costs and attorneys' fees.

Respondent Sotter requested: That Claimant's claim be dismissed in its entirety.

AWARD

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD.

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

1. That Claimant's claim for compensatory damages is denied in its entirety.
2. That Claimant's claim for punitive damages is denied in its entirety.
3. That each party shall bear his costs, including attorneys' fees.

FORUM FEES

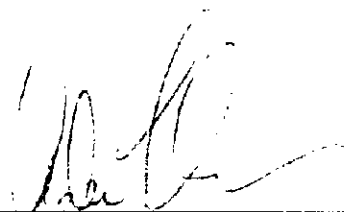
Pursuant to Section 43c of the Code of Arbitration Procedure, the Forum Fees are assessed equally between the Claimant and RAF. The Claimant is assessed forum fees in the amount of \$1500; however, Claimant is entitled to apply his hearing session deposit of \$750 to this amount so that the amount due from the Claimant is \$750. Respondent RAF is assessed forum fees in the amount of \$1500.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

  
\_\_\_\_\_  
Andrew L. Aaron

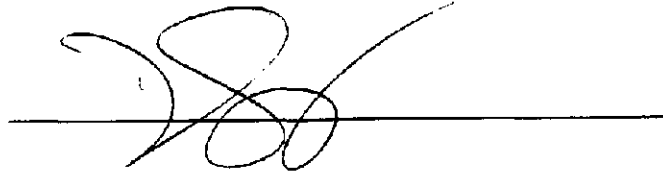
Public Arbitrator

DATED: November 1, 1991

STATE OF: New York  
COUNTY OF: ~~New York~~ Nassau

S.S.:

On this 24<sup>th</sup> day of October, 1991, before me personally appeared Andrew L. Aaron known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

A handwritten signature in dark ink, appearing to be "DS", is written over a horizontal line.

DONALD R. SIEGEL  
Notary Public N.Y. State  
Nassau Cnty. #30-8987800  
Commission Exp. 3/30/92

Concurring Arbitrators' Signatures

Name

Public/Industry

  
James Dolan-Chairman

Public Arbitrator

DATED: November 1, 1991

STATE OF: New York  
COUNTY OF: ~~New York~~ Nassau

S.S.:

On this 28<sup>th</sup> day of October, 1991, before me personally appeared James Dolan, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Marie Valerie Sorace

MARIE VALERIE SCRACE  
Notary Public, State of New York  
No. 4947125  
Qualified in Suffolk County  
Commission Expires February 13, 1993

Concurring Arbitrators' Signatures

Name

Public/Industry

A handwritten signature in dark ink, appearing to read 'Edward S. DeSalvio', written over a horizontal line.

Edward S. DeSalvio

Industry Arbitrator

DATED: November 1, 1991



STATE OF: New York  
COUNTY OF: New York

S.S.:

On this *29th* day of *October*, 1991, before me personally appeared Edward S. DeSalvio known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Sharon L. Sturm*

SHARON L. STURM  
NOTARY PUBLIC, State of New York  
No. 4970893  
Qualified in New York County  
Term Expires August 20, 19*92*

FINDINGS AND CONCLUSIONS

Claimant, a practicing lawyer and experienced investor, brings this case against respondents RAF Financial Corporation, (successor to Pittock Financial Corporation and RAFCO Financial Corporation) and its former registered representative Wally Sotter based on an alleged oral misrepresentation in connection with purchases of an aggregate of 10,000 shares of Greenwich Pharmaceuticals on October 9, 12 and 26, 1987 and February 9, 1988. Claimant had previously purchased and sold this stock at a profit, and had liquidated his last position prior to the October 9 purchase. Claimant alleges he was induced to make the purchases at issue in reliance on a representation by Sotter that the issuer had a "signed contract" with a major drug manufacturer for the marketing of the issuer's anti-inflammatory drug which had not yet received FDA approval.

Based on the credible testimony and documentary evidence, the Panel finds and concludes that the Claimant has failed to prove that the alleged misrepresentation was made. Even if Claimant's version of the facts is accepted, he failed to demonstrate justifiable reliance on the statement. Therefore, the claim is dismissed in its entirety.

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This Award determines all claims, issues and demands set forth in the pleadings and asserted at the hearing.