

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimants

David and Constance Herrstrom
David and Mary Harmon

91-01404

Name of Respondents

Zoch & Zoch Financial Group, Inc.
Donald Zoch
Paul Zoch

REPRESENTATION

For Claimants David and Constance Herrstrom and Reverend David and Mary Harmon, Thomas D. Giachetti, Esq. of the law firm of Stark and Stark.

For Respondents Zoch and Zoch Financial Group, Inc. and David and Paul Zoch, Lawrence R. Gelber, Esq. of the law firm of Beigel and Sandler.

CASE INFORMATION

Statement of Claim filed: May 6, 1991.

Claimant David Herrstrom's submission agreement signed on April 26, 1991.

Claimant Constance Herrstrom's submission agreement signed on April 26, 1991.

Claimant Reverend David Harmon's submission agreement signed on April 26, 1991.

Claimant Mary Harmon's submission agreement signed on April 26, 1991.

Joint Statement of Answer to David and Constance Herrstrom's claim was filed on August 28, 1991.

Joint Statement of Answer to David and Mary Harmon's claim was filed on August 28, 1991.

Respondent Zoch and Zoch's submission agreement signed on August 29, 1991.

Respondent Paul Zoch's submission agreement signed on: August 29, 1991.

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National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

Respondent Donald Zoch's submission agreement signed on August 29, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: August 28, 1992/two sessions
April 28, 1992/two sessions
April 14, 1992/two sessions
April 13, 1992/two sessions
April 08, 1992/two sessions
April 07, 1992/two sessions

Hearing Location: National Association of Securities Dealers, Inc. offices
located Philadelphia, PA.

CASE SUMMARY

Claimants David Herrstrom and Constance Herrstrom (hereinafter "Herrstroms"), and Reverend David Harmon and Mary Harmon (hereinafter "Harmons") alleged that they were inexperienced investors who suffered financial losses and increased their debt directly as a result of investing in unsuitable recommendations made by their financial advisor, Respondent Donald Zoch, owner of Respondent Zoch and Zoch Financial Services Corp. and Paul Zoch who acted as their accountant (hereinafter "Respondents"). In particular, the Herrstroms alleged that they became aware of the financial planning firm of Zoch and Zoch through media advertisements and that Donald Zoch represented to them that a goal of financial independence could be achieved by investing with Zoch and Zoch. The Herrstroms alleged that Donald Zoch recommended Bogert Oil and Gas, Whispering Lakes and other similar limited partnerships, which were unsuitable. Specifically, it was alleged by the Herrstroms that they did not meet net capital requirements for several limited partnerships and thus, were ineligible and considered unaccredited investors. It was alleged that Donald Zoch, nevertheless, approved the Herrstroms for investments not intended for individuals of their income level and risk adverseness. The Herrstroms alleged that as a result of, and pursuant to Zoch and Zoch's recommendations, that they were forced into an untenable investment debt situation which was required and also recommended by Donald Zoch to meet payments on Zoch and Zoch recommendations. The Herrstroms alleged that they had never, before meeting Donald Zoch, heard of limited partnerships. The Herrstroms alleged that Donald Zoch misrepresented the risk and liquidity involved with such investments as similar in risk to municipal bonds and treasury notes. The Herrstroms alleged that Donald Zoch consistently misrepresented to them their account balance. The Herrstroms alleged that due to Donald Zoch's misrepresentations, and pursuant to his advice, they were forced to take a Home Equity Credit Line and remortgage their home to pay for limited partnerships. The Herrstroms alleged that

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Donald Zoch failed to follow their stated investment goals of safety, diversification and liquidity. The Herrstroms alleged that Donald Zoch materially misrepresented the limited partnerships by representing the limited partnerships as being diverse, safe and liquid when they were not. The Herrstroms contend that Roseland Shopping Limited Partnership was affiliated with Donald Zoch and sold to the Herrstroms. The Herrstroms alleged that Donald Zoch offered to lend them money to meet payment obligations on Zoch and Zoch investments, in violation of Federal Reserve regulations. The Herrstroms alleged that these actions were in violation of Zoch and Zoch's fiduciary duty and done with the primary purpose of generating commissions. The Herrstroms alleged that Peter Zoch became the Herrstroms' accountant, which is a conflict of interest and facilitated the fraud against the Herrstroms.

Respondents Zoch and Zoch, Paul Zoch and Donald Zoch maintained that the Herrstroms were educated, sophisticated and knowledgeable investors, who demonstrated their ability to analyze financial situations and who were thoroughly familiar with all aspects of partnerships and taxes. Respondents maintained that the Herrstroms expressed their investment objective as requiring a reduction of federal taxes, thus, limited partnerships were consistent with the Herrstroms goals and objectives. The Respondents maintained that the Herrstroms' debt situation is a result of decisions made by the Herrstroms in a failed effort to increase and retain savings. Respondents maintained that the Herrstroms' damage calculations are not supported by the facts, since the investments made were profitable or sustained only small losses and met their objectives of reducing tax payments. Respondents maintained that Constance Herrstrom spoke directly and repeatedly to representatives of several limited partnerships, conducted her own research, investigations and attended virtually every meeting conducted by representatives of the general partners designed to update investors on the status of limited partnerships. Respondents maintained that Claimants ignored Zoch and Zoch investment advice on diversification; when to sell profitable investments; and on limiting their exposure in limited partnerships. Respondents maintained that Claimants debt situation resulted from choices made by the Herrstroms and directly related to Constance Herrstroms' decision to not work for four years. Respondents maintained that, as affirmative defenses; the claimants' assertions are barred by the applicable statutes of limitations; that punitive damages are not allowed in arbitration proceedings; that Claimants' contract claims do not support such damages; and that all investments were suitable and consistent with the Herrstroms' objectives. Respondents Paul Zoch and David Zoch maintained that they have no involvement in the investments of the Harmons, and are therefore, improper parties herein. Respondent Zoch and Zoch maintained that the Harmons were provided with all available information regarding investments, were suitable investors for limited partnerships and made their purchases only upon reviewing the information and receiving advice generated from other sources.

RELIEF REQUESTED

Claimants requested damages against the Respondents as follows:

A. Principal loss on unsuitable LP investments.....	\$ 235,415
B. Loss on debt incurred for additional LP purchases.....	257,907
C. Opportunity cost loss on principal.....	107,914
D. Commissions and Fees paid to Zoch and Zoch.....	34,000
TOTAL COMPENSATORY DAMAGES.....	635,236
PLUS PUNITIVE DAMAGES.....	2,000,000

Respondents requested that Claimants' claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents requested that pursuant to the applicable statutes of limitation that Claimants' case be dismissed.

The panel denied the Respondents request.

AWARD

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

1. That the Respondents are jointly and severally liable to David and Constance Herrstrom in the amount of \$116,900.80 (ONE HUNDRED SIXTY-THOUSAND, NINE HUNDRED DOLLARS AND EIGHTY CENTS) plus interest at the New Jersey Judgement rate from July 16, 1991 until the date the award is paid.
2. That Respondents are jointly and severally liable to David and Mary Harmon in the amount of \$9,976 (NINE THOUSAND, NINE HUNDRED SEVENTY SIX DOLLARS) plus interest at the New Jersey interest rate from May 9, 1986 until the date the award is paid.

FORUM FEES

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

Six hearing sessions were conducted in this matter and the first hearing session fee was previously filed by the Claimants at the time they filed their claim. The total hearing session fees that remain due to the NASD are

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(6 sessions X \$1,000 = \$6,000 minus hearing session deposit of \$1,000 = \$5,000) \$5,000.

Forum fees are assessed, jointly and severally, against the Respondents in the amount of \$5,000.


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

The Respondents, jointly and severally, are directed by this panel to refund to the Claimants their hearing session deposit of \$1,000.

Concurring Arbitrators' Signatures

Name

Public/Industry


Charles J. Bloom, Esq.

Date of Decision: October 19th, 1992

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

The Respondents, jointly and severally, are directed by this panel to refund to the Claimants their hearing session deposit of \$1,000.

Concurring Arbitrator's Signature

Name

Mary Ann M. Melchiorre, Esq.
Mary Ann M. Melchiorre, Esq.

Public/Industry

Industry

Date of

Decision: October 19th, 1992

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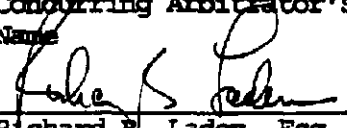
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Concurring Arbitrator's Signature

Name

Public/Industry


Richard E. Laden, Esq.

14 October 1992

Date of Decision: October 19th, 1992