

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**Name of Claimants**

**VS.**

**Name of Respondents**

## **REPRESENTATION**

## CASE INFORMATION

## HEARING INFORMATION

[illegible]

December 1, 1993 - 2 sessions.  
December 2, 1993 - 2 sessions.  
January 5, 1994 - 2 sessions.  
January 6, 1994 - 2 sessions.

Hearing Location: NASD offices located at 260 Franklin Street, Boston, MA 02110.

### CASE SUMMARY

Claimants commenced this arbitration to recover damages arising out of an October 18, 1985, purchase of Palace Associate Limited Partnership unit ("Limited Partnership") through Respondents. Claimants allege that prior to this purchase, they had no significant investment experience and had high school education. Claimants also allege that the offering materials prepared by Respondents and upon which Claimants relied in making the purchase, contained material misrepresentations and omissions. Claimants further allege that Respondents' actions constitute breach of contract, breach of fiduciary duty, violations of securities laws, intentional and negligent tortious misconduct, and other statutory and common law causes of action.

Claimants allege that Garrity inflated their net worth, improperly solicited their investment in the Limited Partnership and that such investment was unsuitable. Claimants also allege that Respondents failed to explain all of the tax consequences and as a result, they did not receive a tax shelter. Claimants further allege that at the time of the investment Respondents failed to provide them with the offering material prior to accepting their payment for the Limited Partnership unit.

Respondents deny each and every allegation of wrongdoing contained in the Statement of Claim and Respondents assert eighteen affirmative defenses.

Respondents contend that Garrity first met Walter Hesson ("Hesson") in 1985 when Claimant responded to a mailing concerning money market accounts for corporations, sent by Garrity's then employer, Shearson Lehman Brothers, Inc. Respondents also contend that Hesson indicated that he would be receiving \$600,000, was involved in real estate and that he was looking for tax shelters to reduce his high taxes. Respondents further contend that Garrity then joined Tucker Anthony and sent out information material on the Limited Partnership, not prepared by Tucker Anthony, to accredited investors, high net worth people and certain certified public accountants. Respondents state that George Hanscom, Claimants accountant, contacted Garrity and indicated that Claimants were interested in investing in the Limited Partnership. Respondents deny that they solicited or pressed Claimants to purchase the Limited Partnership.

Respondents maintain that the investment was suitable for Claimants based upon Claimant's

written statement that their net worth was \$1 million and that they were in the fifty percent (50%) tax bracket. Respondents also maintain that Claimants as well as their accountant was provided with offering memorandum and that Hesson, at his request, was provided with the names of the people involved in the Limited Partnership and he spoke with some of them.

Respondents maintain that Claimants failed to timely complain and are therefore barred from recovery. Respondent also maintain that Claimants failed to allege sufficient facts to state a RICO claim and that this claim is also time barred.

### **RELIEF REQUESTED**

Claimants request an award of \$98,000.00, interest, attorney's fees, costs of this arbitration and punitive damages.

Respondents request that the panel dismiss the Statement of Claim and assess costs against Claimants.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed to receive conformed copies of the award while the original remain on file with the NASD.

On June 11, 1993, Claimant filed an Amended Statement of Claim seeking rescision damages pursuant to Section 410(e) of M.G.L. 110A. Respondents move to dismiss Claimants' Amended Statement of Claim on the grounds that: 1) it is untimely under Section 15 of the *Code of Arbitration Procedure*; 2) it is untimely under the statute of limitations.

Claimants oppose the motion and argue among other things that the Claim was timely. Service was not effectuated on Respondent UST and therefore claims against UST were not considered.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions filed by the parties on January 21, 1994, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' request for rescision under Massachusetts for rescision is denied as untimely.
2. All remaining claims are denied on the merits.

**FORUM FEES**

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

Non-refundable Filing Fee: \$200.00.

Hearing Session Fees: \$750.00 x 12 sessions = \$9,000.00.

Total Fees Due: \$9,200.00.

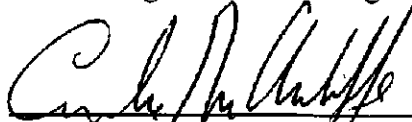
1. Claimants previously deposited \$950.00 and owes a balance of \$ 3,950.00.
2. Responent, Tucker Anthony, is assessed \$4,500.00.

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

**ARBITRATION PANEL**

Cornelius J. McAuliffe, Esq.	-	Public Chairperson
Gerald H. Powers	-	Industry Panelist
Howard M. Schott, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

  
\_\_\_\_\_  
Cornelius J. McAuliffe, Esq.

Date of Decision: March 9, 1994

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Gerald H. Powers	-	Industry Panelist
Howard M. Schott, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

  
Gerald H. Powers

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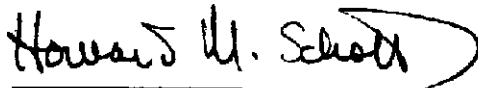
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Concurring Arbitrator's Signature



Howard M. Schott, Esq.

Date of Decision: March 9, 1994