

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

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

Name of Claimant

Sheila Shikowitz Rubin

91-03714

Name of Respondents

Vincent J. Grucci
Matthew R. Leo
Walter L. Munroe
Educators Financial Management, Inc.

REPRESENTATION

For Claimant Sheila Shikowitz Rubin ("Claimant"): Stephen B. Wexler, of
Wexler & Burkhart.

For Respondents Vincent J. Grucci ("Grucci"), Matthew R. Leo ("Leo"), Walter
L. Munroe ("Munroe"), and Educators Financial Management, Inc. ("EFMI"):
Frank J. Evangelist, of Ornsten & Evangelist.

CASE INFORMATION

Statement of Claim filed: November 25, 1991.

Claimant's Submission Agreement signed on: November 16, 1991.

Joint Statement of Answer filed by Respondents on: January 23, 1992.

Respondent Grucci's Submission Agreement signed on: January 13, 1992.

Respondent Leo's Submission Agreement signed on: January 13, 1992.

Respondent Munroe's Submission Agreement signed on: January 13, 1992.

Respondent EFMI's Submission Agreement signed on: January 13, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: September 9, 1992/2 sessions
September 10, 1992/2 sessions
September 11, 1992/2 sessions

Hearing Location: NASD, Inc./New York City, NY

CASE SUMMARY

Claimant alleged Grucci engaged in a pattern of unsuitable investing, in
particular, three (3) Limited Partnership Investments, American Income
Partners V-B L.P., CSA Income Fund IV L.P. and Hard Assets L.P. Claimant

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further alleged Grucci invested her remaining funds in several growth, growth & income, high yield and money market funds with the Putnam and Oppenheimer families of funds. Claimant alleged Grucci engaged in a pattern of unnecessarily transferring monies through the funds on a repeat basis thereby incurring repeat sales charges.

Claimant alleged Leo and Munroe were responsible for the supervision of Grucci and failed to take necessary action to comply with their regulatory responsibilities.

Respondents stated Claimant advised Grucci she was willing to assume a greater degree of risk for greater growth potential; she reviewed prospectuses left by Grucci; selected the Hartford/Putnam variable annuity investment and then cancelled her order. Respondents maintained that following a discussion Claimant selected two Limited Partnerships, Hard Assets I and American Income Fund, which she was advised were illiquid. Respondents asserted all required disclosures were made to Claimant regarding the two Limited Partnerships and prospectuses were provided for each; she received monthly/yearly statements; was apprised of and cognizant of the nature of her investments and the risk factors. Finally, Respondents maintained Grucci did not engage in a scheme to generate commissions.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$179,771.80; attorneys' fees; and punitive or exemplary damages.

Respondents requested: the claim of Claimant be denied in its entirety; costs and counsel fees.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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- Respondents are liable, jointly and severally, and shall pay to Claimant the sum of \$100,000.00, together with interest at the rate of nine (9%) percent per annum from the date of investment to the date of this award

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against tender of the Hard Assets I and American Income partners V-B L.P.
investments to Respondents or their duly authorized representative;

- 2- Claimant's claim for punitive or exemplary damages is denied;
- 3- All other claims are denied;
- 4- Each party shall bear its own costs, including attorneys' fees.

FORUM FEES


Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

6 sessions X \$750.00 = \$4,500.00


Forum fees Assessed Against:

- 1- Respondents, jointly and severally, in the amount of \$4,500.00. However, Respondents shall reimburse Claimant, jointly and severally, the sum of \$200.00 to represent the non-refundable filing fee and \$750.00 to represent the Claimant's previously paid hearing session deposit. Therefore, the amount due and owing to the NASD, Inc. equals \$3,750.00.

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


Martin Fogelman/Public Arbitrator


George Freund/Public Arbitrator

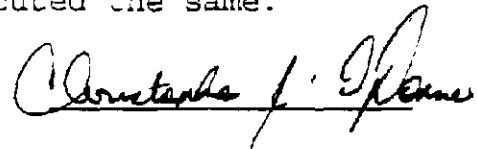

John Belash/Industry Arbitrator

Date of Decision: October 16, 1992

STATE OF NEW YORK

COUNTY OF SUFFOLK

On this 29 day of September, 1992, before me personally appeared Martin Fogelman 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.



CHRISTOPHER J. O'DONNELL
Notary Public, State of New York
No. 4968078
Qualified in Suffolk County *apl*
Commission Expires January 27, 1993

STATE OF *New Jersey*
COUNTY OF *Essex*

On this *3rd* day of *October*, 1992, before me personally appeared George Freund 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.

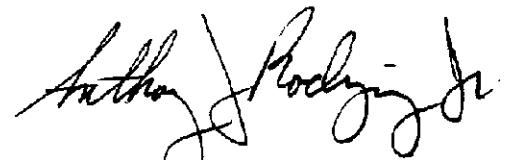
Diana M. Pallante

DIANA M. PALLANTE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 02.17.1994

STATE OF New York

COUNTY OF New York

On this 5th day of October, 1992, before me personally appeared John Belash 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.



ANTHONY J. RODRIGUEZ, JR.
30-4886203
Notary Public, State of New York
Qualified in Nassau County
Commission Expires April 28, 1994

REPORT OF ARBITRATORS

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We believe the basic claim herein is that Respondents induced Claimant, a recently widowed school teacher with no investment knowledge and almost no experience, to invest the proceeds of her late husband's life insurance policies in wholly inappropriate non-liquid limited partnerships, including one speculative partnership investing in U.S. coins (Hard Assets I) for which Respondent Educators Financial Management, Inc. was listed as the Placement Agent, and in which Claimant turned out to own approximately 10% of the total public investment. We believe Respondent Leo is the sole stockholder of the general partner, which is entitled to substantial compensation therefrom, and is also the sole shareholder in Respondent corporation [the stated placement agent of Hard Assets I], and one of the two partners in Respondent partnership [the predecessor of the corporation], and he had no prior experience in investing in rare coins. The offering memorandum disclosed Leo's substantial conflict of interest, and the fact that "the coin portfolio must appreciate substantially to return a profit * * *". We believe the remaining two limited partnerships in which Claimant was advised to, and did, invest are equipment leasing pools AIP-V and CSA Income Fund.

We believe that Respondent Grucci, allegedly a registered account representative in the employ of Respondent Partnership and later Respondent Corporation, was a young high school graduate with no experience in the industry, that at the time of the sale of Hard Assets I and AIP-V to Claimant he was not authorized under NASD Rules to sell direct participation securities to investors, having failed the Series 22 examination twice between March, when he joined the Respondent firm, and October, when he made the sale, and that he was not registered as a securities sales agent pursuant to the law of the State of New York at the relevant times herein. We believe: that the Respondent partnership, and Respondent Leo, and later the Respondent Corporation, knew of Mr. Grucci's inexperience and his lack of NASD qualification; that Leo certified, over his own signature, in the AIP subscription qualification and acceptance page (Respondent's Exhibit A) that he was the Account Representative, that he obtained information from Claimant about Claimant's investment objectives, other investments, financial situation, and that the investment was suitable for her, and that he informed claimant of the lack of liquidity and marketability of the investment despite the fact that Leo admitted that the statement was wholly untrue, and that he was not her Account Representative, never spoke to Claimant, and therefore obtained no information from her, and did not inform her as to liquidity and marketability. We believe is clear that Leo made these representations knowing that the account representative - Grucci - was legally unauthorized to solicit any investor for this type of investment. We believe to have been wholly inadequate the

supervision of Respondent Grucci by the Respondent partnership and Respondent Leo. We believe that the corporation asserted in Claimant's Exhibit 12, its application for a broker-dealer registration (FORM BD), which the corporation represented to be true and complete, that the corporation is a "change from partnership to a corporation * * * the corporation is taking over all the assets and liabilities of the predecessor". Accordingly, we believe, contrary to Leo's assertions, that legally there was no sole proprietorship intervening between the partnership and the corporation, and consequently that Respondents Leo and Munroe were general partners at the relevant times herein, and therefore have been properly made individual parties hereto. We believe: that Respondent Leo frequently disregarded the corporate entity (he did not even know whether his wife, who works for the corporation, was an officer; the Hard Assets offering memorandum, dated October 1, 1989, has the corporate name on the cover, but the corporation was not even in existence on that date, and could not have been authorized to act as a broker-dealer until some period of time after its Form BD had been filed with the SEC). Accordingly, believe the corporate veil should be pierced and Respondent Leo, the sole shareholder and director [who did not know who the corporate officers are] should be personally liable for corporate obligations of EMS, Inc.

After due consideration of the conflicting testimony of Claimant Rubin and Respondent Grucci, we believe that no prospectus was given to Claimant prior to her investments in Hard Assets I and AIP-V.

We believe Respondent Grucci induced Claimant to invest in Hard Assets I and AIP-V without advising her of the illiquidity and non-marketability thereof, and at a time and under circumstances when such investment was wholly inappropriate for this recent widow with no experience in investing and an annual income of about \$50,000. We believe that the partnership did not properly supervise this account and its recently hired and financially untutored, inexperienced and unlicensed employee Grucci. We believe Respondent Leo, as supervisor, and the partnership, should not have allowed Grucci to advise Claimant or any other person with respect to limited partnership investments. We believe Respondent Leo, who should have known better than to allow those investments in this case, not only did not advise against them, but concurred in foisting them on Claimant. We believe he also had a substantial conflict of interest in the Hard Assets limited partnership. Further, we believe the fact that Claimant stated she did not want to touch the principal of the funds she was investing did not mean she wanted them tied up for an extended period of years and to be unavailable to her. In addition, we believe it wholly inappropriate to have invested monthly distributions in a load mutual fund out of which monthly cash distributions were then made to Claimant in accordance with her instructions, and we believe that the NASD should look into Respondent Leo's participation in that matter, as well as into his false certification of himself as being Claimant's Account Representative with respect to the investment in AIP-V, especially

In the light of his prior forgeries (creation and use of a fictitious signature guarantee stamp) and other violations, and his knowingly allowing an unlicensed (NASD for Hard Assets I and AIP-V and throughout for N. Y. State) ill-prepared employee to give investment advice to a bereaved and investment inexperienced widow of two months as to how to invest her husband's insurance proceeds.

All concur.