

N.A.S.D. AWARD

PUBLIC

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant(s)**

Harold E. Anderson  
Susan F. Groberg  
Dr. H. Carlton & Ida Howard  
Gary S. Indyk  
Joanette Keeley  
John Nadzak  
Doris E. Riley  
Anthony Sfarra

92-01478

**Name of Respondent(s)**

Baird Patrick & Company, Inc.  
Damon Keeley  
Andrew Dorman

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**REPRESENTATION**

For Claimants Harold E. Anderson, Susan F. Groberg, Dr. H. Carlton and Ida Howard, Gary S. Indyk, Joannee Keeley, John Nadzak, Doris E. Riley and Anthony Sfarra (collectively "Claimants"): Daniel E. Sommers, Esq. of the law firm of Clemente, Dickson and Mueller, Morristown, New Jersey.

For Respondents Baird Patrick and Company, Inc., Damon Keeley and Andrew Dorman: Jeffrey P. Flynn, Esq. of the law firm of Crummy, Del Deo, Dolan, Griffinger and Vecchione, Newark, New Jersey.

**CASE INFORMATION**

Joint Statement of Claim filed: April 29, 1992.

Claimant Harold E. Anderson's Submission Agreement signed on: May 8, 1992.

Claimant Dr. H. Carlton Howard's Submission Agreement signed on: April 29, 1992.

**Claimant Gary S. Indyk's Submission Agreement signed on: April 29, 1992.**

**Claimant John Nadzak's Submission Agreement signed on: April 29, 1992.**

**Claimant Doris E. Riley's Submission Agreement signed on: April 28, 1992.**

**Claimant Anthony Sfarra's Submission Agreement signed on: May 5, 1992.**

**Joint Statement of Answer filed by Respondents Baird Patrick and Company,  
Damon Keeley and Andrew Dorman on: September 23, 1992.**

**Respondent Baird Patrick and Company, Inc.'s Submission Agreement signed on:  
September 17, 1992.**

**Respondent Damon Keeley's Submission Agreement signed on: November 10, 1993.**

**Respondent Andrew Dorman's Submission Agreement signed on: September 21, 1992.**

## HEARING INFORMATION

Pre-hearing conference: April 1, 1994  
April 5, 1994

**Hearing Dates/Sessions:** September 13, 1993 / Two Sessions  
September 14, 1993 / Two Sessions  
October 25, 1993 / Two Sessions  
October 26, 1993 / Two Sessions  
December 19, 1994 / Two Sessions  
December 20, 1994 / Two Sessions  
December 21, 1994 / Two Sessions  
December 22, 1994 / Two Sessions

Hearing Location: NASD offices located in New York City, New York.

### CASE SUMMARY

Claimants alleged that Respondent Baird Patrick and Company Inc. ("Respondent Baird") and its brokers and traders, including Respondent Damon Keeley ("Respondent Keeley") and Respondent Andrew Dorman ("Respondent Dorman") were aggressively promoting the common stock of Professional Health Care of America, Inc. ("PHCA") in late 1989 and early 1990. Claimants further alleged that there were several material matters concerning PHCA which were, or should have been known to Respondent Baird which were not disclosed to the Claimants, including inaccessibility of PHCA's credit line, cancellation of expansion plans, undisclosed loan transactions, lack of sufficient insurance coverage, and overinflated account receivable balances. The Claimants contended that notwithstanding its obligation as a market maker in PHCA, Respondents failed to disclose any of these material irregularities and continually advised the Claimants that there were "no problems with the company".

Claimant Harold E. Anderson ("Claimant Anderson") alleged that upon opening his account with Respondent Baird in 1989, neither Respondent Keeley nor any other representative of Respondent Baird inquired as to his financial position, investment history, or investment objectives. Claimant Anderson further alleged that after receiving overly optimistic projections regarding PHCA, he purchased 500 shares for \$2,125.00. Claimant Anderson maintained that he still owns these shares today and they are worthless.

Claimant Susan F. Groberg ("Claimant Groberg") alleged that she informed the Respondents that she lacked any investment experience and would rely on their advice as to proper investments that would preserve capital, show potential for long term conservative growth, and allow some dividend income. Claimant Groberg further alleged that after being assured by Respondents that PHCA was a "sure thing" and would "probably quadruple", she purchased 1200 shares for \$5,101.95 and they are presently worthless.

Claimants Dr. H. Carlton Howard and Mrs. Ida Howard ("Claimants Howard") alleged that after numerous telephone calls from Respondent Keeley aggressively soliciting purchases of PHCA stock they eventually purchased 22,500 shares for a total investment of \$84,905.55. The Howards further alleged that Respondents never inquired as to their financial position, investment history, or investment objectives and that they were overwhelmed with misinformation. The Howards contended that they still own the worthless shares.

Claimant Gary Indyk ("Claimant Indyk") alleged that upon opening his account Respondents made no inquiry as to his financial position, investment history, or investment objectives. Claimant Indyk further alleged that he was interested in investments that would provide long term growth and appreciation and he believed the Respondents would only recommend investments meeting this criteria. Claimant Indyk contended that he was induced to purchase 5000 shares of PHCA for \$21,251.95 without any indication that this was a speculative or risky investment and he still owns the worthless shares.

Claimant Joannette Keeley ("Claimant Keeley") alleged that upon opening her account with Respondent no inquiry was made as to her financial position, investment history, or investment objectives. Claimant Keeley further alleged that she relied on Respondents' information indicating that PHCA would satisfy her investment objectives and she presently owns 1,000 shares for which she paid \$3,752.00 and they are worthless.

Claimant John Nadzak ("Claimant Nadzak") alleged that he informed Respondent Keeley of his conservative investment history and strategy and was reassured of PHCA's stability and long term growth potential. Claimant Nadzak further alleged that he was eventually pressured into purchasing 8500 shares for which he paid \$31,979.20 and they are presently worthless.

Claimant Doris E. Riley ("Claimant Riley") alleged that she informed Respondent Baird and its representatives that she was a widow who had retired with a fixed income and required a certain amount of income per month to cover her living expenses. Claimant Riley further alleged that even with this knowledge, Respondents engaged in high pressure sales tactics to induce an investment in PHCA, indicating that it was a safe investment with long term growth potential. Claimant Riley contended that she was persuaded to purchase 4500 shares of PHCA for an aggregate investment of \$15,301.95 and still holds these worthless shares today.

Claimant Anthony Sfarra ("Claimant Sfarra") alleged that, relying on information received from Respondent Keeley, he purchased 900 shares of PHCA for a total of \$3,631.80 and that these shares are now worthless.

Respondents maintained that during the time in question, from June of 1989 through April of 1990, Respondent Baird, along with at least a dozen other member firms, was a market maker in securities issued by PHCA. Respondents further maintained that they engaged in no unlawful activity, but simply purchased and sold the securities of PHCA in the open market for the accounts of its customers. The Respondents contended that Respondent Keeley opened non

discretionary cash accounts with Respondent Baird for each of the Claimants, but only after he had insured that each transaction was consistent with the needs and objectives of each Claimant as indicated by the information he obtained regarding each Claimant's age, income, marital status, net worth, and investment experience. The Respondents further contended that Respondent Dorman was a syndicate manager employed by Respondent Baird and had no contact with any of the Claimants and had no responsibility for Claimants' accounts. The Respondents maintained that each Claimant authorized each of the transactions at issue, promptly remitted payment after receiving a confirmation, and did not complain about the transactions at issue for nearly two years, until the commencement of this proceeding.

The Respondents maintained that at the time of his 1989 purchase of PHCA stock, Claimant Anderson disclosed to Respondent Keeley a net worth of approximately \$600,000.00, an annual salary of \$35,000.00, and investment objectives directed at speculative risk and intermediate term growth.

The Respondents maintained that at the time of her 1989 investment, Claimant Groberg was employed as an attorney, with a net worth of approximately \$200,000.00 and an annual salary of \$25,000.00. Respondents further maintained that Claimant Groberg's securities account was fully diversified, with holdings in excess of \$22,000.00 in two separate income producing bond funds along with her \$4,500.00 investment in PHCA.

The Respondents contended that the Claimants Howard transferred five existing securities accounts to Respondent Baird in 1989. The Respondents further contended that Mrs. Howard declared a net worth of approximately \$500,000.00 and Dr. Howard declared a net worth exceeding \$1 million. The Respondents maintained that the Howard's were sophisticated investors who regularly traded various types of equity securities including low priced equity securities issued by medical service firms such as PHCA.

The Respondents maintained that Claimant Indyk, who is Respondent Keeley's stepfather, revealed an income of approximately \$500,000.00, a net worth of \$1.75 million, and that he had prior investment accounts with Bear Stearns and Company, Inc.

The Respondents contended that Claimant Keeley, who is Respondent Keeley's stepmother, expressed interest in purchasing investments that were speculative and which offered a potential for long term growth.

The Respondents maintained that Claimant Nadzak, who had three accounts with Respondent Baird expressed a desire to purchase speculative investments with long term growth potential for his third account and purchased shares of PHCA pursuant to Respondent Keeley's recommendation for this third account.

The Respondents contended that Claimant Riley disclosed annual earnings of \$35,000.00 and a net worth of \$500,000.00. The Respondents further contended that Riley reported that she had prior investment experience and would transfer into her account with Respondent Baird various securities including several mutual funds and stocks. The Respondents maintained that Claimant Riley further informed them that she wished to diversify her portfolio and acquire securities that were speculative and offered potential for long term growth.

The Respondents maintained that Claimant Sfarra opened two accounts with Respondent Baird in 1989 disclosing a salary of \$50,000.00 and a net worth of approximately \$350,000.00. The Respondents further maintained that Claimant Sfarra instructed them that one account was to be invested in speculative securities with the potential for intermediate growth.

The Respondents contended that the recommendation of PHCA stock was made only after Respondent Keeley personally traveled to the company headquarters in Chicago to meet with its senior executive officers, review its public filings, and tour its headquarters. The Respondents further contended that each recommendation made by Respondent Keeley was based exclusively upon the information available from the public filings and once Keeley made his initial recommendations he continued to observe the development and progress of PHCA.

#### **RELIEF REQUESTED**

Claimant Harold E. Anderson requested \$2,125.00 in compensatory damages.  
Claimant Susan F. Groberg requested \$5,101.95 in compensatory damages.  
Claimants Dr. H. Carlton Howard and Ida Howard requested \$84,905.55 in compensatory damages.

Claimant Gary Indyk requested \$21,251.95 in compensatory damages.  
Claimant Joannette Keeley requested \$3,752.00 in compensatory damages.  
Claimant John Nadzak requested \$31,979.20 in compensatory damages.  
Claimant Doris E. Riley requested \$15,301.95 in compensatory damages.  
Claimant Anthony Sfarra requested \$3,631.80 in compensatory damages.

In addition, the Claimants requested damages representing loss of investment opportunity, punitive damages; interest; and attorneys' fees and costs.

Respondents requested a dismissal of all claims and that they be awarded interest, attorneys' fees, costs of suit and such other relief as the panel deems just and proper.

### **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 Baird Patrick and Company, Inc. and Damon Keeley are jointly and severally liable and shall pay to Claimants H. Carlton Howard and Ida Howard the sum of \$32,828.00 in actual damages plus simple interest at the rate of 8% per annum from the date of decision until the date of payment of the award.
2. Respondents Baird Patrick and Damon Keeley are jointly and severally liable and shall pay to the Claimant Susan F. Groberg the sum of \$2,900.00 in actual damages plus simple interest at the rate of 8% per annum from the date of decision until the date of payment of the award.
3. Respondents Baird Patrick and Damon Keeley are jointly and severally liable and shall pay to the Claimant John Nadzak the sum of \$13,920.00 in actual damages plus simple interest at the rate of 8% per annum from the date of decision until the date of payment of the award.
4. Respondents Baird Patrick and Damon Keeley are jointly and severally liable and shall pay to the Claimant Doris Riley the sum of \$17,750.00 in actual damages plus simple interest at the rate of 8% per annum from the date of decision until the date of payment of the award.
5. The claims by Claimant Harold E. Anderson against Respondents Baird Patrick and Company, Inc., Damon Keeley and Andrew Dorman are dismissed in their entirety.
6. The claims by Claimant Gary S. Indyk against Respondents Baird

Patrick and Company, Inc., Damon Keeley and Andrew Dorman are dismissed in their entirety.

7. The claims by Claimant Anthony Sfarra against Respondents Baird Patrick and Company, Inc., Damon Keeley and Andrew Dorman are dismissed in their entirety.
8. Respondents' motion to dismiss with prejudice the claims of Claimant Joannette Keeley is granted in its entirety.
9. All claims by the Claimants against Respondent Andrew Dorman are dismissed.
10. All claims for punitive damages by all of the Claimants are denied.
11. Each party shall bear their respective costs including attorneys' fees.

#### **FORUM FEES**

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

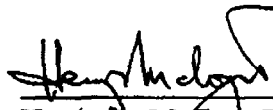
2 pre-hearing conferences x (\$300.00) + 16 sessions x (\$750.00)  
Non-refundable filing fee \$200.00  
Hearing session fees: \$9,000.00 (16 sessions x \$750.00) + 2 pre-hearing conferences (\$600.00)  
Total Fees: \$12,800.00

The undersigned arbitrators have determined that Claimants are responsible jointly and severally for one half (1/2) of the cost of arbitration and Respondents Baird Patrick and Company, Inc. and Damon Keeley are responsible for one half (1/2) of the cost.


1. Claimants are jointly and severally assessed \$6,400.00 Claimants previously paid \$950.00 and owe a balance of \$5,450.00.
2. Respondents Baird Patrick and Company, Inc. and Damon Keeley are jointly and severally assessed the sum of \$6,400.00.

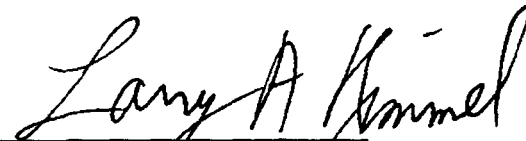


ARBITRATOR'S SIGNATURE

  
Henry R. McCoy, II, Esq.  
Public Arbitrator

*Henry*  
The Chairman, Mr. Henry McCoy, II, Esq., respectfully dissents from the portion of the award addressing the compensatory damages awarded to Claimant John Nadzak.

  
Neil J. Carey  
Public Arbitrator

  
Larry A. Kimmel  
Industry Arbitrator

Date of Decision: February 13, 1995

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 2<sup>nd</sup> day of February, 1995, before me personally appeared Henry McCoy, II, Esq. 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.

Mahesh M. Dave

MAHESH M. DAVE  
40 Baltoral Crescent  
White Plains, N.Y. 10607  
Registration No. 4953345  
Commission Expires on 7/10/95

STATE OF: CONNECTICUT

SS: Stamford

COUNTY OF: Fairfield

On this 3<sup>rd</sup> day of February, 1995, before me personally appeared Neil J. Carey 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.

Olga L. Davila

6/30/98

STATE OF: New York

SS:

COUNTY OF: New York

On this 2<sup>nd</sup> day of February, 1995, before me personally appeared Larry A. Kimmel known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

Victoria Beddoe

VICTORIA BEDDOE  
Notary Public, State of New York  
No. 24-4710477 Richmond  
Qualified in Kings County  
Commission Expires July 31, 1996