

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant(s)**

George J. Wallace  
Gary and Meg Wallace

CONSOLIDATED CASES  
92-01863 and 92-02822

**Name of Respondent(s)**

Yaeger Securities, Inc.  
Yaeger Capital Markets  
Norma Yaeger  
Robert Neiditch  
John Barrett

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**REPRESENTATION**

For Claimants: Robert M. Roth, Investors Arbitration Services, Inc., Woodland Hills, California

For Respondents: H Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los Angeles, California

**CASE INFORMATION 92-01863**

Statement of Claim filed: June 2, 1992  
Amended Statement of Claim filed: June 4, 1993  
Claimant's Submission Agreement signed: May 26, 1992

Joint Statement of Answer filed by Respondents Yaeger Securities, Inc. and Norma

Yaeger: August 10, 1992

Statement of Answer filed by Respondent Robert Neiditch: June 29, 1992

Statement of Answer filed by Respondent John Barrett: July 2, 1992, on or about  
Respondents' Submission Agreements signed as follows:

Yaeger Securities, Inc.: July 17, 1992

Norma Yaeger: July 17, 1992

Robert Neiditch: June 26, 1992

John Barrett: June 29, 1992

### **CASE INFORMATION 92-02822**

Statement of Claim filed: August 20, 1992

Amended Statement of Claim filed: June 4, 1993

Claimants' Submission Agreement signed: July 24, 1992

Joint Statement of Answer filed by Respondents Yaeger Securities, Inc., Norma  
Yaeger, Robert Neiditch and John Barrett: November 6, 1992

Respondents' Submission Agreements signed as follows:

Yaeger Securities, Inc.: November 4, 1992

Norma Yaeger: November 4, 1992

Robert Neiditch: November 4, 1992

Respondent John Barrett did not file a Submission Agreement with respect to case  
number 92-02822. Respondent Yaeger Capital Markets did not file a Statement  
of Answer and Submission Agreement with respect to the above-captioned matters.  
However, both Respondents were duly served and are subject to National  
Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with  
Section 12 of the Code of Arbitration Procedure.

### **HEARING INFORMATION**

Pre-Hearing Conference Dates/Sessions: April 26, 1993 (one session)  
July 30, 1993 (one session)

Hearing Dates/Sessions: August 2, 1993 (two sessions)  
August 3, 1993 (two sessions)

Hearing Location: Los Angeles, California

## **CASE SUMMARY**

Claimants alleged that Respondents failed to discuss any risks concerning Claimants' purchase of Monarch Point Associates limited partnership. Claimants further alleged violation of Sections 10(b) and 20 of the Securities Exchange Act of 1934, fraud, deceit and omission of material fact, suitability, intentional misrepresentation of fact, violation of the NASD Rules of Fair Practice Article III, Section 2 "Recommendations to Customers" and Section 27 "supervision", breach of fiduciary duty, negligent misrepresentation and breach of the implied covenant of good faith and fair dealing with respect to their investment.

In response to the Statement of Claim filed by George J. Wallace, Yaeger Securities, Inc. and Norma Yaeger denied generally and specifically, each and every allegation contained in the Statement of Claim and alleged that George J. Wallace is an experienced, sophisticated and wealthy investor who understood the risks associated with his investments.

Respondent Robert Neiditch denied the allegations of wrongdoing contained in the Statement of Claim of George J. Wallace and alleged that Mr. Wallace is a sophisticated investor who made his own investment decision to purchase units in Monarch Point Associates.

Respondent John Barrett denied any liability with respect to George J. Wallace's Claim. John Barrett alleged that he was affiliated with Yaeger Securities, Inc. as an independent contractor, and not as an employee and further alleged that Mr. Wallace was not, and is not a customer of Mr. Barrett. Mr. Barrett also alleged that he was not the supervisor of Neiditch and Yaeger, exercised no control or authority over them, and had no responsibility for their actions as alleged in the Statement of Claim. Mr. Barrett also asserted affirmative defenses.

In response to the Statement of Claim filed by Gary and Meg Wallace, Respondents Yaeger Securities, Inc., Norma Yaeger, Robert Neiditch and John Barrett denied generally and specifically, each and every allegation in the Statement of Claim and alleged that in January of 1990, George Wallace, after conducting an investigation of the Monarch Point Associates project, advised Claimant Gary Wallace to make an investment therein. Acting on his father's instructions, Claimant Gary Wallace made an unsolicited investment in the same

project and in the process represented himself to be an accredited investor. Respondents further alleged that based upon the information available to all Respondents, Gary Wallace is an accredited investor and is thus suitable for the investment which was purchased by him after being recommended by his father.

### **RELIEF REQUESTED**

George J. Wallace requested:

1. Compensatory damages of \$25,000.00 plus interest at 12% from the time of investment;
2. Pre-award and post-award interest as allowed by law;
3. Cost of arbitration and expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable and just; and
4. Punitive damages, in an amount to be determined by the panel of arbitrators.

Gary and Meg Wallace requested:

1. Compensatory damages of \$25,000.00 plus interest at 12% from the time of investment;
2. Pre-award and post-award interest as allowed by law;
3. Cost of arbitration and expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable and just; and
4. Punitive damages, in an amount to be determined by the panel of arbitrators.

Respondents requested:

1. Dismissal of Claimants' claims;
2. Costs; and
3. Attorneys' 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. All claims by Claimant George J. Wallace, including the claim for punitive damages, are dismissed.
2. Yaeger Securities, Inc. is solely liable for and shall pay to Claimants Gary and Meg Wallace the sum of \$10,000.00, inclusive of interest.
3. Robert Neiditch is solely liable for and shall pay to Claimants Gary and Meg Wallace the sum of \$5,000.00, inclusive of interest.
4. Gary and Meg Wallace's claim for punitive damages is denied.
5. The parties shall each bear their respective costs including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$400.00 hearing session deposits previously deposited by George J. Wallace and Gary and Meg Wallace. Forum fees are to be split between Claimants and Respondents and are calculated as follows:

Two pre-hearing sessions	@ \$300.00/session	=	\$ 600.00
Four hearing sessions	@ \$400.00/session	=	<u>\$1,600.00</u>
Total fees assessed		=	\$2,200.00
Claimants' share, jointly and severally (50%)		=	\$1,100.00
Credit for hearing deposits		=	\$ 800.00

Balance due = \$ 300.00

Respondents' share, jointly and  
severally (50%) = \$1,100.00

Balance due = \$1,100.00

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

**ARBITRATORS**

Name Public/Industry

Daniel K. Donahue, Esq. Public Arbitrator

Philip W. Burge Public Arbitrator

Larry Maize Industry Arbitrator

**Concurring Arbitrators' Signatures**

Daniel K. Donahue, Esq.

*Philip W. Burge*

Philip W. Burge

Date Served: 09/03/93

Larry Maize

Date of Decision:

*August 3, 1993*