

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Russell Petro

Case #  
92-01958

Name of Respondents

Yankee Financial Group, Inc.  
Arthur Rottenstein

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**REPRESENTATION**

For Claimant, Wolf Haldenstein Adler, Esq. of Freeman & Herz.

For Respondents, Thomas J. McCabe, Esq., a sole practitioner.

**CASE INFORMATION**

Statement of Claim was filed on June 11, 1992.

Claimant's Submission Agreement was signed on June 4, 1992.

Statement of Answer filed by Respondents Yankee Financial and Arthur Rottenstein on August 7, 1992.

Respondent Yankee Financial's Submission Agreement signed on May 11, 1993.

Respondent Arthur Rottenstein's Financial Submission Agreement signed on May 11, 1993.

**HEARING INFORMATION**

Hearing Date/Session: May 11, 1993 - Two Sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices, located at 33 Whitehall Street, New York, New York.

### CASE SUMMARY

Claimant alleged that he informed Respondents that his investment objective was conservative, that Respondent Rottenstein disregarded these instructions, that Respondents made unsuitable investments in speculative penny stocks including stock in Consolidated TC Resources LTD, Universal Trident Industries LTD and Consolidated Paytel LTD, and that these investments were made without authorization and without advising Claimant of the speculative nature of these investments. Claimant further alleged that this conduct was a breach of contract and that Respondents breached their duties as prescribed by Rule 401 of the New York Stock Exchange and NASD Rules of Fair Practices, Sections 1 and 2. Claimant further alleged that Respondents were negligent, that Respondent Yankee Financial failed to adequately supervise and monitor its representatives and that Respondent Rottenstein knowingly misrepresented material facts.

Respondents maintained that it was suitable for Claimant to invest a portion of his assets in growth stock, that Claimant specifically and expressly authorized every transaction effected in his account, that Claimant was informed about the investments in his portfolio and that Claimant never complained about the handling of his account. Respondents further maintained that Respondent Rottenstein advised Claimant that it would be a mistake to liquidate his entire equity position at the time because the stocks had been purchased for long-term appreciation and that, had Claimant held these positions for the long-term, he could have realized a profit. Respondents further maintained that the claims are barred under the applicable statute of limitations, that the claims are barred by the defense of laches or unreasonable and prejudicial delay, that the claims are barred by the defense of ratification, waiver and estoppel, that the Statement of Claim fails to state a claim upon which relief may be granted and that events beyond the control of Respondents were the sole and proximate cause of Claimant's alleged losses.

### RELIEF REQUESTED

Claimants requested the following awards:

- a) \$112,609.79 for losses resulting from unauthorized and unsuitable investments;
- b) all consequential damages and losses suffered by Claimant as a direct and/or proximate result of the conduct alleged in the claim;
- c) costs and expenses attributable to these proceedings;
- d) attorneys' fees;
- e) punitive damages in an amount to be determined by the arbitration panel.

Respondents requested that Claimant's claim be dismissed in its entirety and that Respondents be awarded costs, including reasonable attorney's fees, connected with the defense of this claim.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

The hearing was originally scheduled for February 17, 1993. Claimant requested, was granted a postponement of the hearing and was assessed a \$750.00 fee in connection with the postponement.

**AWARD**

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

1. All claims be and hereby are dismissed.
2. Requests for attorneys' fees be and hereby are denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable filing fee - \$200.00

2 sessions x \$750.00 = \$1,500.00

Total paid by Claimant = \$950.00

Net due = \$750.00

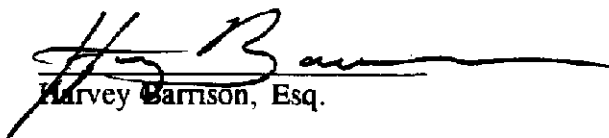
The Claimant Russell Petro be and hereby is liable and shall pay to the NASD the sum of \$750.00.

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

ARBITRATION PANEL

Harvey Barrison, Esq.	-	Public Chairperson
Thomas A. Turley	-	Industry Arbitrator
Marion P. Costanza	-	Public Arbitrator


Concurring Arbitrator's Signature  
Name

  
Harvey Barrison, Esq.

Date of Decision: June 3, 1993

STATE OF NEW YORK s.s.:  
COUNTY OF NEW YORK


On this 2 day of May, 1993, before me personal appeared Harvey Barrison 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.

  
**MARY LEE CUNNINGHAM**  
Notary Public, State of New York  
No. 30-4884018  
Qualified in Nassau County  
Commission Expires March . 1994

ARBITRATION PANEL

Harvey Barrison, Esq.	-	Public Chairperson
Thomas A. Turley	-	Industry Arbitrator
Marion P. Costanza	-	Public Arbitrator

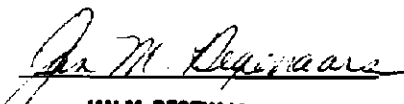
Concurring Arbitrator's Signature  
Name

  
Marion P. Costanza

Date of Decision: June 3, 1993

STATE OF <sup>NEW JERSEY</sup> S.S.:  
COUNTY OF <sup>BERGEN</sup>


On this 27 day of May, 1993, before me personal appeared Marion P. Costanza 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.

  
**JAN M. DEGENARO**  
A Notary Public of New Jersey  
My Commission Expires 06/06/1997

ARBITRATION PANEL

Harvey Barrison, Esq.	-	Public Chairperson
Thomas A. Turley	-	Industry Arbitrator
Marion P. Costanza	-	Public Arbitrator

Concurring Arbitrator's Signature  
Name

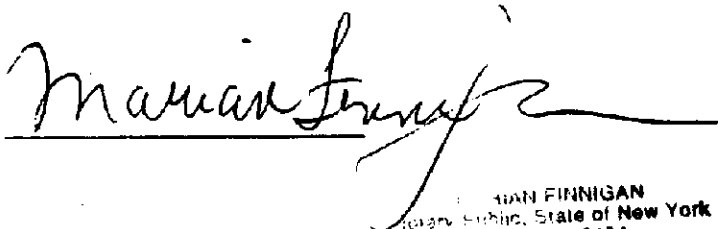
  
Thomas A. Turley

Date of Decision: June 3, 1993

STATE OF NY  
COUNTY OF NY

S.S.:

On this June day of ~~May~~, 1993, before me personal appeared Thomas A. Turley 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.



MARION FINNIGAN  
Notary Public, State of New York  
No. 41-4798434  
• Qualified in Queens County  
• Notary filed in New York County  
• Commission Expires June 30, 1994