

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Steven, Judith, Marc and Jeremy Wurtzman
Harold Paley Trust

92-01986

Name of Respondents

Tucker Anthony Incorporated
Sven Monberg

REPRESENTATION

For Claimants Steven, Judith, Marc and Jeremy Wurtzman and Harold Paley Trust: Robert J. Pearlman, Esq. of the law firm of Robert J. Pearl.

For Respondents Tucker Anthony Incorporated and Sven Monberg: Patrick J. Howley of Tucker Anthony Incorporated.

CASE INFORMATION

Statement of Claim filed: June 12, 1992.

Claimants' Submission Agreement signed on: June 10, 1992.

Joint Statement of Answer filed by Respondents Tucker Anthony Incorporated and Sven Monberg on: August 27, 1992.

Respondent, Tucker Anthony Incorporated's Submission Agreement signed on: August 25, 1992.

Respondent, Sven Monberg's Submission Agreement signed on: August 26, 1992.

HEARING INFORMATION

Hearing Date(s)/Sessions: September 10, 1993 / Two Sessions

Hearing Location: The hearing was held at the NASD offices located in New York City, New York.

CASE SUMMARY

Claimants alleged that Respondents made false and misleading statements and omissions in connection with Claimants' four related accounts. Claimants further alleged that Respondents engaged in fraudulent conduct by recommending and purchasing unsuitable investments for Claimants and breached the fiduciary duty owed to Claimants. Claimants further alleged that Respondent Sven Monberg violated Article III Section 2 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. and that Respondent Tucker Anthony Incorporated violated Article III Section 27 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. as well as Rule 405 of the New York Stock Exchange. Claimants further alleged that Respondents engaged in grossly negligent conduct and/or reckless disregard for the Claimants' investment objectives, needs and financial circumstances. Claimants further alleged that Respondents breached their contract with Claimants by making unsuitable investments on Claimants' behalf in light of Claimants' stated investment objectives. Claimants further alleged that Respondents' conduct entitles them to recover damages as a result of Respondents' investments on Claimants' behalf, including appropriate earnings and interest on their investments and for Claimants' costs, expenses and disbursements, including reasonable attorney's fees in pursuing the arbitration proceeding.

Respondents Tucker Anthony Incorporated and Sven Monberg maintained that Claimants are adults who had previous investment experience prior to opening the four related accounts with Respondents. Respondents further maintained that all losses that resulted from securities purchased/traded were specifically authorized by Claimants. Respondents further maintained that contrary to the allegations in Claimants' Statement of Claim, there were no improprieties or rule violations by any of the Respondents in connection with the handling of the four related accounts. All transactions were handled by Respondents on a "non-discretionary" basis and were confirmed in writing as well as being reflected on a monthly account statement received by Claimants. Respondents further maintained that Claimants were in frequent contact with Respondent, received supplemental, periodic computer-generated profit and loss summaries and had quarterly personal meetings at Claimants' home to review the status of the accounts. Respondents further maintained that no transaction was effected by Respondent without speaking with Claimants and receiving their prior approval/authorization. Respondents further maintained that based upon Claimants' disclosures and prior investment transactions Respondents fully complied with Claimants' investment

objectives. Respondent further maintains that they were not negligent in the handling of Claimants' accounts nor did they make any misrepresentations or omissions or breach any duties owed to Claimants in connection with their accounts and Claimants' arbitration claim is no more than a transparent attempt to shift their market losses to their broker. Respondents further maintained that the claim fails to state a claim against either respondent for which any damages are recoverable by Claimants and that Claimants failed to mitigate their damages. Respondents further maintained that Claimants ratified all transactions in the accounts by failing to object in a timely manner and are estopped from denying that orders were entered for their accounts for execution based upon their authorization and instructions to Respondents. Respondents further maintained that by Claimants' actions or failure to act, they have waived all claims against Respondents. Respondents further maintained that Claimants' calculation of damages is erroneous and improperly inflates and exaggerates the actual realized loss. Respondents further maintained that as a matter of New York law, Claimants are not entitled to recover their attorney's fees or punitive damages. Respondents further maintained that the Statement of Claim should be dismissed in all respects and the costs of this proceeding should be assessed against Claimants.

RELIEF REQUESTED

Claimants requested: damages of \$260,000.00 which is the total amount of losses including appropriate earnings and interest on their investments, costs, expenses and disbursements, including reasonable attorney's fees. Claimants further requested exemplary damages so as to deter Respondents Tucker Anthony Incorporated, Sven Monberg and others from engaging in such conduct in the future.

Respondents Tucker Anthony Incorporated and Sven Monberg requested an award against the Claimants dismissing the complaint in all respects and that all costs of this proceeding be assessed against Claimants. requested.

AWARD

After considering the pleadings, the testimony and the evidence and arguments of the parties and counsel presented during the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondents are hereby liable jointly and severally and shall pay to Claimant, Judith Wurtzman, as trustee of the Harold Paley Trust the sum

of \$55,000.00.

2. The Respondents are hereby liable jointly and severally and shall pay to Claimant, Judith Wurtzman, as Custodian for Jeremy Aaron Wurtzman the sum of \$21,500.00.
3. The Respondents are hereby liable jointly and severally and shall pay to Claimant, Judith Wurtzman, as Custodian for Marc Scott Wurtzman the sum of \$12,500.00.
4. No award is made to Claimants Steven and Judith Wurtzman, as joint tenants with right of survivorship.
5. Each party shall bear their respective costs including attorney's fees.

FORUM FEES

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

2 Sessions x \$750.00 = \$1500.00 less Claimants' hearing session deposit (\$750.00) = \$750.00 due.

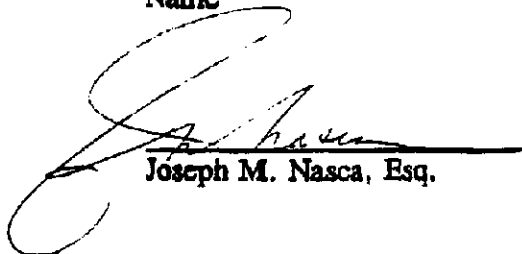
Forum fees Assessed Against:

The Claimants be and hereby are liable and shall pay to the NASD the sum of \$750.00 to represent forum fees and the Respondents are hereby liable jointly and severally and shall pay to the NASD the sum of \$750.00 to represent forum fees.

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

Concurring Arbitrators' Signatures
Name

Public/Industry



Joseph M. Nasca, Esq.

Public

NASD DATE OF DECISION: January 14, 1994

of \$55,000.00.

2. The Respondents are hereby liable jointly and severally and shall pay to Claimant, Judith Wurtzman, as Custodian for Jeremy Aaron Wurtzman the sum of \$21,500.00.
3. The Respondents are hereby liable jointly and severally and shall pay to Claimant, Judith Wurtzman, as Custodian for Marc Scott Wurtzman the sum of \$12,500.00.
4. No award is made to Claimants Steven and Judith Wurtzman, as joint tenants with right of survivorship.
5. Each party shall bear their respective costs including attorney's fees.

FORUM FEES

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

2 Sessions x \$750.00 = \$1500.00 less Claimants' hearing session deposit (\$750.00) = \$750.00 due.

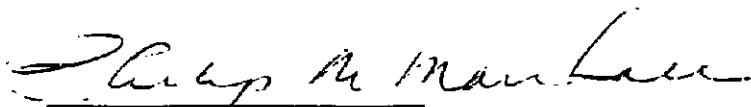
Forum fees Assessed Against:

The Claimants be and hereby are liable and shall pay to the NASD the sum of \$750.00 to represent forum fees and the Respondents are hereby liable jointly and severally and shall pay to the NASD the sum of \$750.00 to represent forum fees.

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

Concurring Arbitrators' Signatures
Name

Public/Industry


Phillip Marshall, Esq.

Public

NASD DATE OF DECISION: January 14, 1994

of \$55,000.00.

2. The Respondents are hereby liable jointly and severally and shall pay to Claimant, Judith Wurtzman, as Custodian for Jeremy Aaron Wurtzman the sum of \$21,500.00.
3. The Respondents are hereby liable jointly and severally and shall pay to Claimant, Judith Wurtzman, as Custodian for Marc Scott Wurtzman the sum of \$12,500.00.
4. No award is made to Claimants Steven and Judith Wurtzman, as joint tenants with right of survivorship.
5. Each party shall bear their respective costs including attorney's fees.

FORUM FEES

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

2 Sessions x \$750.00 = \$1500.00 less Claimants' hearing session deposit (\$750.00) = \$750.00 due.

Forum fees Assessed Against:

The Claimants be and hereby are liable and shall pay to the NASD the sum of \$750.00 to represent forum fees and the Respondents are hereby liable jointly and severally and shall pay to the NASD the sum of \$750.00 to represent forum fees.

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

Concurring Arbitrators' Signatures
Name

Public/Industry


Richard Scalfani

Industry

NASD DATE OF DECISION: January 14, 1994