

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)

Emily DeWolfe

92-04381

Name of Respondent(s)

W.J.Nolan & Company, Inc.  
Robert J. Pannell

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**REPRESENTATION**

For Claimant: K. Will Petterson of Arbitration Recovery Consultants, Inc.

For Respondent Hayward Richard Pressman, Esq., sole practitioner.

**CASE INFORMATION**

Statement of Claim filed: December 30, 1992.

Claimant's Submission Agreement signed on: December 23, 1992.

Joint Statement of Answer filed by Respondents W.J. Nolan & Company, Inc. and Robert Pannell on: January 29, 1993.

Respondents W.J. Nolan & Company, Inc. and Robert Pannell's Submission Agreement signed on: February 2, 1993.

**HEARING INFORMATION**

Pre-hearing conference: May 7, 1993

Hearing Dates/Sessions: May 24, 1993 / Two Sessions  
June 23, 1993 / Two Sessions  
June 24, 1993 / Two Sessions

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

### **CASE SUMMARY**

Claimant alleged that upon opening her account at Respondent W.J. Nolan & Co., she instructed Respondent Robert Pannell, registered representative of Respondent W.J. Nolan & Co., Inc., to invest her money in safe, non-speculative securities which would produce a steady income and not jeopardize her principal. Claimant further alleged that Respondent Pannell came to Claimant's home in June 1987 and told her he had an excellent, safe, income-producing investment for her, whereby, Claimant told Respondent Pannell that she did not have any liquid assets for investments and would have to sell a piece of property left by her husband. Claimant further alleged that Respondent Pannell told her the investment was ultra safe and would produce the steady income she needed, and Respondent Pannell induced Claimant to buy NNP Limited Partnership. Claimant contended that when she failed to receive any income from her investment she contacted Respondent Pannell who told her not to worry; however, by 1990 the investment was worthless. Claimant alleged Respondents breached their fiduciary duty to Claimant by recommending unsuitable investments, purchasing non-income producing security and covering up the poor performance of the high risk investment. Claimants further alleged that Respondents recommended and misrepresented the value of the investment which caused Claimant to lose money in his account.

Respondents maintained that in 1986 Claimant informed Respondent Pannell she had approximately \$500,000.00 to \$600,000.00 in liquid funds that she wanted to invest, and Claimant was always interested in purchasing securities with the highest income. Respondent maintained that the Claimant acknowledged in writing that she received a prospectus on the investment and it met Claimant's suitability requirements. Respondents further maintained that Claimant furnished information to the Respondents indicating she met the suitability requirements for the investment established by the NASD and offeror and is estopped from denying it. Respondents maintained that Claimant waited over 5-1/2 years before making the claim and is guilty of laches, thus the claim should be dismissed.

### **RELIEF REQUESTED**

Claimant requested \$100,000.00 in compensatory damages.

Respondents requested all claims be dismissed.

### **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 be and hereby are dismissed in their entirety.
2. Respondent W.J. Nolan & Company, Inc., be and hereby is liable and shall pay Claimant the sum of \$650.00 to represent fees previously deposited with the NASD.
3. Each party shall bear its own costs including attorneys' fees.

**FORUM FEES**

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

6 sessions x \$500.00 + \$300.00 (pre-hearing conference) = \$3,300.00  
less \$500.00 deposit = \$2,800.00 net due.

Forum Fees Assessed Against:

Respondent W. J. Nolan & Company, Inc. be and hereby is liable and shall pay the NASD the sum of \$2,800.00 to represent forum fees.

The NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit.

**ARBITRATORS' SIGNATURE**


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Richard W. Baldwin, Esq.  
Public Arbitrator

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C. Anthony Bell  
Industry Arbitrator

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Henry H. Balter  
Public Arbitrator

Date of Decision: July 28, 1993

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared **Richard W. Baldwin, 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.

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STATE OF:

SS:

COUNTY OF:

On this      day of      , 1993, before me personally appeared **C. Anthony Bell** 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.

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STATE OF: *New York*

SS:

COUNTY OF: *Suffolk*

On this *8th* day of *July*, 1993, before me personally appeared **Henry H. Balter** 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.

*Elizabeth L. Cobb*

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ELIZABETH L. COBB  
NOTARY PUBLIC, State of New York  
Qual. in Suffolk Co. : 82-4696988  
Commission Expires March 24, 1995

*5/31/95*

**ARBITRATORS' SIGNATURE**

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Richard W. Baldwin, Esq.  
Public Arbitrator

*C. Anthony Bell*  

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C. Anthony Bell  
Industry Arbitrator

---

Henry H. Balter  
Public Arbitrator

Date of Decision: July 28, 1993

STATE OF:

SS:

COUNTY OF:

On this       day of       , 1993, before me personally appeared **Richard W. Baldwin, 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.

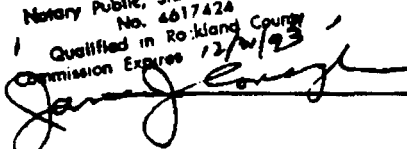
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STATE OF:

SS:

COUNTY OF:

On this 22 day of JULY , 1993, before me personally appeared **C. Anthony Bell** 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.

— JAMES J. CONCAGH  
Notary Public, State of New York  
No. 4617424  
Qualified in Rockland County  
Commission Expires 12/21/93  


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STATE OF:

SS:

COUNTY OF:

On this       day of       , 1993, before me personally appeared **Henry H. Balter** 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.

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**ARBITRATORS' SIGNATURE**

A handwritten signature in dark ink, appearing to read "Richard W. Baldwin", written over a horizontal line.

Richard W. Baldwin, Esq.  
Public Arbitrator

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C. Anthony Bell  
Industry Arbitrator

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Henry H. Balter  
Public Arbitrator

Date of Decision: July 28, 1993



STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this *6* day of *July*, 1993, before me personally appeared **Richard W. Baldwin, Esq.** know 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.



ROSE MARIE J. BELLAFORE  
Notary Public, State of New York  
No. 41-4600469  
Qualified in Queens County  
Certificate Filed in New York County  
Westchester County, Kings County  
Nassau County & Suffolk County  
Commission Expires Jan. 31, 1996

STATE OF:

SS:

COUNTY OF:

On this     day of     , 1993, before me personally appeared **C. Anthony Bell** 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.

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STATE OF:

SS:

COUNTY OF:

On this     day of     , 1993, before me personally appeared **Henry H. Balter** 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.

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