

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Estate of Joseph Wohl, D.D.S.  
and Marcia Wohl IRA Account

vs.

93-00687

Name of Respondents

Monaco Securities, Inc.  
First Radnor Equities, Inc.  
Charles L. Gorenberg  
John J. Fischer  
Denise R. McGann  
Richard L. Breyley  
Seymour Frank  
Asset Allocations Advisors, Inc.

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REPRESENTATION

For Claimants Estate of Joseph Wohl, D.D.S. and Marcia Wohl IRA Account ("Claimants"): Mitchell Corbett, Attorney at Law - Morristown, NJ.

For Respondents Monaco Securities, Inc. ("Monaco"), John J. Fischer ("Fischer"), Richard L. Breyley ("Breyley") and Asset Allocations Advisors, Inc. ("Asset Allocation"): Steven Kapustin, Attorney at Law, Plymouth Meeting, PA.

For Respondent First Radnor Equities, Inc. ("First Radnor"): Stephen A. Haber, Esq. of the law firm of Obermayer, Rebmann, Maxwell & Hippel, Philadelphia, PA.

For Respondent Charles L. Gorenberg ("Gorenberg"): Richard C. Klein, Esq. of the law firm of Klein and Halden, Haddonfield, NJ.

For Respondents Denise R. McGann ("McGann") and Seymour Frank ("Frank"): Mark A. Verlin, Attorney at Law, Bala Cynwyd, PA.

**CASE INFORMATION**

Statement of Claim filed: February 23, 1993.  
Amended Statement of Claimant filed: August 27, 1993.  
Claimant Estate of Joseph Wohl's Submission Agreement signed by Hope L. Wohl, Executrix on: May 3, 1993.  
Claimant Estate of Joseph Wohl's Submission Agreement signed by Judith Wohl, Executrix on: April 22, 1993.  
Claimant Estate of Joseph Wohl's Submission Agreement signed by Richard Wohl, Executor on: April 21, 1993.  
Claimant Estate of Joseph Wohl's Submission Agreement signed by Marcia S. Wohl, Executrix on: April 23, 1993.

Statement of Answer and Cross-claim filed by Respondent First Radnor Equities, Inc. on: October 22, 1993.  
Respondent First Radnor did not file a Submission Agreement.  
Response of First Radnor to Affirmative Defenses of Monaco, Asset Allocations, Fischer and Breyley filed on: October 22, 1993.

Joint Statement of Answer filed by Respondents Monaco Securities, Asset Allocation Advisors, Fischer and Breyley on: July 19, 1993.  
Joint Statement of Answer filed by Respondents Monaco Securities, Asset Allocation Advisors, Fischer and Breyley to Claimants' Amended Statement of Claim on: September 22, 1993.  
Joint Answer of Respondents Monaco Securities, Asset Allocation Advisors, Fischer and Breyley to Cross-claim of Co-Respondent First Radnor filed on: October 19, 1993.  
Respondent Monaco Securities's Submission Agreement signed on: August 4, 1993.  
Respondent John J. Fischer's Submission Agreement signed on: July 15, 1993.  
Respondent Asset Allocation Advisors Inc.'s Submission Agreement signed on: July 15, 1993.  
Respondent Richard L. Breyley's Submission Agreement signed on: July 15, 1993.

Statement of Answer filed by Respondent Gorenberg on: July 19, 1993  
Answer of Respondent Gorenberg to First Radnor's Cross-claim filed on: October 14, 1993.  
Respondent Charles Gorenberg's Submission Agreement signed on: July 16, 1993.

Joint Statement of Answer filed by Respondents McGann and Frank on:  
September 15, 1993.

Joint Answer of Respondents Frank and McGann to the Cross-claims of  
Respondent First Radnor filed: October 22, 1993.

Respondent Denise R. McGann's Submission Agreement signed on: July 29,  
1993.

### HEARING INFORMATION

Hearing Dates/Sessions: May 25, 1994 - two sessions  
May 26, 1994 - two sessions

Hearing Location: Holiday Inn, Philadelphia, PA.

### CASE SUMMARY

Claimants alleged as follows:

That while Dr. Joseph Wohl was alive, he approached Respondent Charles Gorenberg for appropriate financial advice. Mr. Gorenberg had been an acquaintance of both the Claimants for many years and had previously sold to the Claimants certain insurance products unrelated to the substance of the claims in this arbitration. Mr. Gorenberg had, at the time of the events in question, known the Claimants for approximately twenty-five (25) years. At all times relevant, it is claimed that both Dr. and Mrs. Wohl ("Wohls") were unsophisticated investors.

Sometime in the early fall of 1989, Dr. Wohl requested some specific advice and recommendations from Mr. Gorenberg with respect to the possible reinvestment of a substantial portion of his retirement funds which were then being held in IRA accounts. Dr. Wohl at that time was approximately 70 years of age and contemplating retirement from his dental practice in the immediate future both because of his age and because of certain physical problems.

At the time of the first contact, it was further alleged by Marcia Wohl that Dr. Wohl was experiencing significant physical problem and discomfort of a then-undetermined source. These physical symptoms grew increasingly worse over the next few months and increasingly impaired Dr. Wohl's thinking.

In about September, 1989, Dr. and Mrs. Wohl met with Mr. Gorenberg and one other person at Mr. Gorenberg's office. At that meeting, several possibilities were briefly outlined to the Wohls for the reinvestment of their retirement funds. The Wohls insisted that the most important factor to be considered was the preservation of their principal. Consequently, they expressed to Mr. Gorenberg their concern that, while it would be desirable to provide some appreciation of their investment and some income therefrom, these considerations must remain secondary to the preservation of capital in the new investment. As Mr. Gorenberg explained to them, the investments suggested by him were "safe".

At the end of that meeting certain materials were given to the Wohls to review. It is claimed that the materials given to the Wohls did not include prospectuses. Mrs. Wohl stated that at the time of that meeting she did not know what an "L.P." was, although she later came to know what it stood for but not how it "worked". Mrs. Wohl recalls that one specific investment that was discussed was a product called "Fidelity Leasing" which "... had something to do with computers" and would have a "...seven year return of principal with 15.50% interest". One representation made to the Wohls, "...net value of the investment after seven years", meant to Mrs. Wohl that their investment would be secure. The Wohls stressed again that they were conservative and only wanted "safe" investments.

Subsequent to the first meeting between Dr. Wohl and Mr. Gorenberg, two additional meetings were held. Before those meetings occurred, however, Dr. Wohl's physical symptoms became more noticeable and alarming, particularly with respect to recurrent weakness and undiagnosed bleeding. Claimants both became extremely frustrated over the inability of anyone to diagnose the source of the bleeding or the cause of Dr. Wohl's other symptoms.

The first of the subsequent two meetings was held in March, 1990. At that meeting a ten (10) page report on the stationery of Asset Allocation Advisors, Inc. was given to the Wohls. This report listed detailed specific investment recommendations and projections for the Wohls consideration, and four separate "programs" for investment. Each of the listed programs and investments were chosen by Gorenberg. The figures presented on the report were Mr. Gorenberg's representations as to specific returns for each investment and the projected performance of each product. While the report highlighted information that might typically be contained in a prospectus, the report was not a prospectus.

The products which are the subject of this arbitration are Fidelity Leasing Income Fund, VII, L.P. ("Fidelity"); Citadel Secondary Market Mortgage Fund

("Citadel"); and Westin Preferred Income Fund III ("Westin"). Each of these products were listed on the afore-mentioned report.

Certain specific representations were made by Mr. Gorenberg at that meeting. Specifically, for example, the Citadel investment was "expected" to produce a return of 14 to 18% interest per annum; Fidelity was proposed as the last in a line of programs that first six of which had been "very successful"; Westin was to return all principal within three (3) years of initial investment and produce about 12% interest per annum. Mrs. Wohl recalls being confident at that point in time and with those recommendations because Mr. Gorenberg kept assuring Dr. and Mrs. Wohl that he was "risk averse", a claim that they interpreted to mean that their investments would be safe. At that point, Dr. Wohl was contemplating investing \$275,000 of the \$425,000 total he had in Keogh retirement funds in those products recommended by Mr. Gorenberg. At the end of that meeting, the Wohls were given the report to take with them as well as some other information, but not any prospectus for the proposed investment(s).

Dr. Wohl's physical condition then became progressively and rapidly worse, so much so that, Mrs. Wohl has alleged, anyone who knew him at all, let alone for twenty-five (25) years, had to notice physical deterioration, and, coordinately, decreased lack of mental capacity and acuity.

In late April, 1990, Dr. and Mrs Wohl returned to see Mr. Gorenberg. At this second meeting, further discussions were had about the proposed investments. At no time did Mr. Gorenberg disclose that he had an interest, either as a market maker, broker, principal, or investor or the like in any of the products recommended or entities involved. At this second meeting, Dr. Wohl ultimately chose Program #4 because, according to the report prepared by Mr. Gorenberg and distributed by him to the Wohls, it had a slightly higher rate of income while still apparently adhering to the principal goal of the Wohls, preservation of principal. At this meeting, Claimants signed some documents that they were given which might have included subscription agreements and new account forms.

Based upon the information contained in the report and the recommendations and representations of Mr. Gorenberg, the Wohls invested \$275,000 in three limited partnerships: Westin, Citadel and Fidelity. These limited partnerships were, not in fact, liquid, conservative investments dedicated to the preservation of capital, but rather illiquid, speculative investments, all of which involved significant risk to principal. This was known to the Respondents at all times relevant, but withheld and concealed from the Claimants. All these trades were placed through Respondent Monaco Securities, Inc.

As a consequence, the \$275,000 investment of the Wohls significantly depreciated in value, became and was illiquid, did not perform as represented, and materially decreased paying "dividend" and "interest", and, for one particular investment, stopped paying "interest" all together. As a consequence, Claimants urged, inter alia, that Respondents should be held liable because the investments were unsuitable and the Wohls lacked the level of sophistication to appreciate the tenor of the investments made; and because of a failure to adequately and properly supervise.

In 1993, Mrs. Wohl attempted to mitigate her damages, sold her interest in Fidelity and realized a return of \$49,894.10.

As a consequence of the above, the Wohls claimed that Mr. Gorenberg should be individually responsible for actual losses in the amount of \$221,514.21, inclusive of interest; legal fees in an undetermined amount; expert witness fees of a medical doctor who examined and treated Dr. Wohl; filing fees in the amount of \$950.00; and expenses in the amount of \$242.99. Liability was also urged to be assessed jointly and severally against Mr. Gorenberg, as the registered representative and as director of Citadel Financial Group, Inc., the general partner of Citadel Secondary Market L.P. Fund I, Ltd; Monaco Securities, Inc., as the broker dealer; Asset Allocation Advisors, Inc., as the investment advisor; First Radnor Equities, Inc. an "alter ego" of Monaco; Denise McGann; John J. Fischer, as president and shareholder of Monaco, shareholder and vice-president of Asset Allocation Advisors, Inc., and president and chief financial officer of Citadel Financial Group; Richard L. Breyley, as shareholder and treasurer advisor of Asset Allocations, and as director of Citadel Financial.

It is also claimed that Respondents Monaco and Asset Allocations were responsible for the actions and, consequently, the liability of the individual Respondents under the doctrine of respondeat superior.

The Statement of Claim recited eight counts. The First Count stated claims for violations of the 1934 Act, Section 10-b and Rule 10-b(5), together with Exchange Act Sections 11, 12(2) and 15.

The Second Count asserted claims under N.J.S.A. Sections 49:3-52, 49:3-53, and 49:3-71, demanding rescission and restitution, plus interest.

The Third Count asserted a claim for breach of contract.

The Fourth Count asserted a cause of actions for common law negligence.

The Fifth Count asserted a cause of actions for common law negligence.

The Sixth Count asserted a claim for violation of the rules of fair practice.

The Seventh Count asserted a claim for fraudulent inducement and the Eighth Count asserted a claim for common law fraud.

#### RESPONDENTS' CASE

The Respondents, in general, denied each and every allegation and asserted several affirmative defenses. Additionally, First Radnor cross-claimed against Monaco for indemnity.

Specifically, Gorenberg denied that the investments were unsuitable; that the Claimants were uninformed; and that the investments were made with fraudulent and/or deceptive intent. He specifically claimed that Dr. Wohl was both a careful and experienced investor; that he had previous experience in limited partnerships; and that he wanted at all times to be fully informed in detail as to each possible investment. He denied that he noted any physical or mental deterioration in Dr. Wohl's condition during the time period in question, but only that same became evident after subscriptions for the subject investments were signed and Dr. Wohl had already become hospitalized.

Respondent Gorenberg further stated that the investments were in fact sound and, except for Citadel which had stopped paying a return, the investments would and did perform as anticipated. Mrs. Wohl was present at all the meetings and took extensive notes on the discussions, but apparently did not understand that what was initially disbursed to an investor, including the Wohls, was a return of a portion of an investor's principal, and then there would be coordinate partial distribution of interest.

By stipulation of the parties, Monaco Securities consented to the entry of a judgment against it and in favor of First Radnor as detailed below.

#### RELIEF REQUESTED

The Claimants requested that the Respondents should be jointly and severally liable for actual losses in the amount of \$221,514.21, inclusive of interest; legal

fees in an undetermined amount; expert witness fees of a medical doctor who examined and treated Dr. Wohl; filing fees in the amount of \$950.00; and expenses in the amount of \$2342.99.

The Respondents requested that all Counts in the Statement of Claim be dismissed, together with cost, expenses and disbursements to abide the event.

First Radnor requested that judgment in its favor in the nature of indemnification for legal expenses, costs and disbursements be entered against Monaco Securities Inc. in the amount of \$12,009.36. Monaco Securities stipulated and consented to entry of said judgment, See below.

#### **OTHER ISSUES CONSIDERED AND 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 original(s) remains on file with the N.A.S.D.

At the close of Claimants' case, Mr. Gorenberg's counsel made several motions addressed to the sufficiency of Claimants' case and proof. The motions were in the nature of a motion to dismiss certain of the Counts alleged by the Claimants. these motions were joined in and adopted by the rest of the Respondents in substantial part.

Mr. Klein, for Mr. Gorenberg, moved to dismiss the First, Second, Fourth, Fifth and Seventh Counts. Mr. Haber, on behalf of First Radnor, also joined in that motion and further moved do dismiss Count Three for lack of privity, and Count Sixth. Mr. Kapustin, on behalf of Respondents Monaco, Asset Allocations, Fischer and Breyley moved to dismiss all claims as to the individual Respondents (excluding Mr. Gorenberg) for failure to show "controlling person" liability, and joined in the motions of Mr. Klein as to the corporate Respondents Monaco and Asset Allocations. Mr. Verlin, on behalf of Respondents McGann and Frank, adopted the arguments of Mr. Kapustin and also joined in the motion.

In view of the serious, substantive nature of the motions, after the panel caucused in executive session outside the presence of the parties and their counsel, it was determined that the Claimants' attorney should respond in detail at the beginning of the third session on May 26, 1994.



After oral argument by Claimants' counsel at the beginning of the third session, the panel again caucused in executive session to determine and rule on the several motions of the Respondents. Consequent to the executive session, the panel unanimously ruled that it would treat the motion to dismiss both as a motion to dismiss and as one for summary judgment. The Panel unanimously granted summary judgment to and in favor of Respondents Denise McGann; Seymour Frank; John Fischer; and Richard Breyley as to each and every Count of the Statement of Claim. The panel further unanimously granted summary judgment as to each and every count of the Statement of Claim to and in favor of the Respondent First Radnor.

As to the Respondents Monaco Securities, Asset Allocations Advisors and Charles Gorenberg, the panel unanimously denied summary judgment; but, in the alternative, granted that portion of Respondents' motion to dismiss each and every allegation of Counts Fifth and Sixth, as well as each and every element of Count First which raised allegations of liability under Sections 11, 12 (20 and 15 of the Exchange Act.

#### AWARD

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

An Award in the amount of \$74,080.10, exclusive of interest, shall be and hereby is awarded in favor of the Claimant Estate of Joseph Wohl, D.D.S. Said award is diminished and decreased in proportion to the comparative fault of Dr. Joseph Wohl, D.D.S. in the amount of \$37,040.05, for a net award to the Estate of Joseph Wohl, D.D.S. in amount of \$37,040.05.

An Award in the amount of \$74,080.15, exclusive of interest, shall be and hereby is awarded to Claimant Marcia Wohl, with no offset, decrease or diminution thereof for a net award to Claimant Marcia Wohl in the amount of \$74,080.15. Interest on said Awards is awarded in the amount of \$5,926.40 to be added to said Award to the Estate of Dr. Wohl for a total Award in the amount to the Estate of Dr. Wohl of \$42,966.45; and \$11,852.82 to said Award to Claimant Marcia Wohl for a total Award in the amount of \$85,932.92 to Claimant Marcia Wohl, for a total Award to the Claimants in the amount of \$128,899.37.

Said Award is assessed as against Respondents Gorenberg, Asset Allocations Advisors, Inc., and Monaco Securities, Inc., jointly and severally.

As among the Respondents Gorenberg, Asset Allocations Advisors, Inc. and Monaco Securities, said Respondents shall have and hereby are granted contribution as and to said Award against each other and shall have said award apportioned as among themselves as follows: Gorenberg, 50% liability; Asset Allocations, 25% liability; Monaco Securities, 25% liability. Nothing herein shall be construed to affect any right of the Claimants to seek payment of said Award in its entirety from any one or more of the culpable respondents.

All claims for attorney's fees are hereby denied.

The claim of Claimants for expert witness fees is hereby denied.

All claims for punitive damages are hereby denied.

All claims for expenses and disbursements by all parties are hereby denied.

As between Respondents First Radnor and Monaco Securities with respect to all cross-claims of any nature, it was also stipulated and agreed as between those parties that an Award shall be had and entered in the amount of \$12,009.36 in favor of Radnor and against Monaco. An Award in the amount of \$12,009.36 is hereby granted to First Radnor and against Monaco Securities.

All other claims of all parties not specifically disposed of herein are hereby deemed and are denied.

#### **FORUM FEES**

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

4 hearing sessions x \$750 = \$3,000  
Claimants deposited \$750 for the initial hearing session  
Respondent First Radnor deposited \$600 for its hearing session

Forum Fees Assessed Against:

\$1,200.00 as and for forum fees to be paid by Monaco Securities, Inc.; and -

\$1,200.00 as and for filing fees to be paid by Asset Allocations Advisors, Inc.

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\$600.00 as and for filing fees to be paid by Respondent Charles Gorenberg.

The NASD shall refund to Claimants their hearing session deposit of \$750 and shall refund to First Radnor its hearing session deposit of \$600.

All forum fees are and shall be payable to the N.A.S.D., Inc.

**ARBITRATION PANEL**

Michel J. Landron, Esq., Chairman  
Frank T. Salera  
Albert Mancini, Jr.

Public Arbitrator  
Industry Arbitrator  
Public Arbitrator

Concurring Arbitrator's Signature

Name

  
Albert Mancini, Jr.

NASD DATE OF DECISION: July 20, 1994

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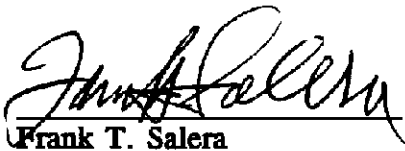
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Public Arbitrator  
Industry Arbitrator  
Public Arbitrator

Concurring Arbitrator's Signature

Name

  
Frank T. Salera

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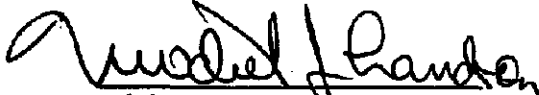
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Concurring Arbitrator's Signature

Name

  
Michel J. Landron, Esq.

NASD DATE OF DECISION: July 20, 1994