

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

John Sich and Mary A. Sich

93-02323

Name of Respondent

Marion J. Molenda

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**REPRESENTATION**

For Claimants, John Sich and Mary A. Sich ("Claimants"): Jeffrey A. Sellers, Esq. of the law firm of Silverberg, Yood, Sellers & McGorry located in Buffalo, New York.

For Respondent, Marion J. Molenda ("Respondent"): Respondent appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: June 11, 1993

Claimants' Submission Agreement signed on: June 4, 1993.

Statement of Answer filed by Respondent on: August 20, 1993.

Respondent's Submission Agreement signed on: August 31, 1993.

**HEARING INFORMATION**

Hearing Date: April 13, 1994 - Two sessions.

Hearing Location: The Hilton Hotel located in Buffalo, New York.

## CASE SUMMARY

Claimants alleged that Respondent, who was associated with Professional Brokerage Services, Inc. during the period from August, 1987 through March, 1988, and represented himself as a stockbroker and financial consultant for Oppenheimer & Co., Inc., induced the Claimants to open an account and invest monies in allegedly safe and secure investments designed to provide regular and consistent interest and dividend income. Claimants also alleged that Respondent persuaded Claimants to engage in a pattern of trading which generated excessive commissions, had no legitimate purpose, was inappropriate and unsuitable, and resulted in the purchase of valueless securities.

Claimants further alleged that in reliance on Respondent's advice, Claimants purchased 320,000 shares of Norcap, Inc. at a gross cost of \$10,000.00; that they were neither notified nor advised of the commission charges or markup in relation to the purchase of Norcap; that Norcap, Inc., which never paid any dividends, is currently a valueless security; and that Respondent knew that Norcap, Inc. was an inappropriate and unsuitable investment objective at the time of purchase.

Furthermore, Claimants alleged that during or about March, 1988, Respondent advised them that he was changing affiliations and that their account would be moved to RAF Financial Corporation. Claimants alleged that Respondent indicated that he would continue to maximize interest and tax exempt income commensurate with Claimants' investment objectives. Claimants also alleged that on April 27, 1988, Claimants deposited \$4,000.00 in their account at Respondent's urging in order to purchase 100,000 shares of Perfect Products, Inc., which was presented by Respondent as a stable, solid company that would pay income and dividends on a regular and consistent basis; that Claimants were charged a \$1,000.00 commission on this purchase; and that Perfect Products is currently valueless.

In addition, Claimants alleged that Respondent either liquidated or caused Claimants to sell such investments as Franklin Age High Income Fund, Nuveen Tax Exempt Bonds, and Oppenheimer High Yield Fund, and applied the sales proceeds to other investments supposedly more beneficial and suitable.

Respondent alleged that Claimants signed a general legal release whereby Respondent was released from all liability resulting from these claims. Furthermore, Respondent maintained that the Claimants' investment objectives for the accounts at both Oppenheimer and RAF Financial were income, tax free income and speculation. Respondent also maintained that he had no discretionary powers and had made no guarantees regarding investment returns. Respondent asserted that he presented the low priced securities as high risk investments without income. Moreover, Respondent contended that Claimants not only knew him, but had conducted a number of transactions with Respondent prior to 1989.

In addition, Respondent maintained that the Claimants advised him of their considerable prior trading experience with E.F. Hutton.

### **RELIEF REQUESTED**

Claimants requested awards against the Respondent as follows:

1. The sum of \$10,000.00, plus interest at 9% per annum, that being the judgment rate of interest in the State of New York, from March 25, 1986, from Respondent;
2. The sum of \$4,000.00, plus interest at 9% per annum, that being the judgment rate of interest in the State of New York, from April 27, 1988, from Respondent;
3. Any and all other sums, commissions earned and received by the Respondent, together with interest at 9% per annum from the date of the earning of the commission; and
4. Such other relief deemed appropriate by the Arbitrators as a result of Respondent's investment conduct and the excessive commissions charged.

Respondent requested that the arbitration panel find in his favor and dismiss all claims against Respondent.

### **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 original remains 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. Respondent be and hereby is liable and shall pay \$6,000.00 to Claimants, interest specifically excluded.
2. All other claims against the Respondent be and hereby are dismissed in all respects.
3. Each party shall bear their respective costs including attorney fees.

Respondent, Investacorp, Inc.'s Submission Agreement signed on: October 28, 1992

Respondent, Alan Weinberg's Submission Agreement signed on: October 28, 1992

Respondent, Weinberg Financial Group's Submission Agreement signed on: October 28, 1992

### HEARING INFORMATION

Hearing Date/Sessions: June 16, 1992/2 sessions

Hearing Location:   Holiday Inn  
                          620 Delaware Ave.  
                          Buffalo, NY 14202

### CASE SUMMARY

Claimants alleged that the Respondents, Investacorp, Inc. ("Investacorp") and Alan Weinberg and his firm Weinberg Financial Group (together, "Weinberg"), breached the fiduciary obligations that they had assumed by transacting the business of the Claimants. In addition, the Claimants alleged that the Respondents failed to act in accordance with the obligations imposed upon them by the Fair Practice Standards and other guidelines of acceptable conduct imposed upon them by the National Association of Securities Dealers. Claimants alleged that on or about October, 1986, they met with Weinberg to discuss the investment of Claimants' retirement income. Claimants alleged that Weinberg was fully informed of Claimants' desire to find investments that exposed their capital to minimal risk, while supplying a steady flow of income and maintaining their liquidity so that emergency expenses could be met should the need arise.

Claimants alleged that, after this discussion, Weinberg recommended three investments to the Claimants which they were led to believe satisfied their aforementioned investment objectives. Claimants alleged that they totally relied upon Weinberg's recommendations in purchasing Balcor pension Investors No. 7, for the sum of \$37,000.00; the Concord Milestone Income Fund Limited Partnership, for the sum of \$25,000.00; and VMS Mortgage Investors Limited Partnership, for the sum of \$44,930.00. Claimants alleged that Weinberg represented that each of these investments had been fully researched, reviewed and investigated by Weinberg and Investacorp, and that Claimants relied upon such representations. Claimants further alleged that these investments were inappropriate for their investment goals because they bore a higher level of risk and a lower level of liquidity than the Claimants desired, which, Claimants alleged, the Respondents either knew or should have known.

### FORUM FEES

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

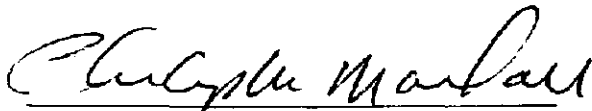
2 sessions X \$400 = \$800.

Forum fees Assessed Against:

1. Claimants, John and Mary A. Sich, have deposited \$400 and therefore \$0 is due from Claimants.
2. Respondent Molenda is hereby liable and shall pay to the NASD the sum of \$400.00.

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

Concurring Arbitrators' Signatures



Philip Marshall, Esq.  
Chairperson  
Public Arbitrator

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James G. Parker  
Public Arbitrator

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Richard Scalfani  
Industry Arbitrator

Date of Decision July 22, 1994

STATE OF:

COUNTY OF:

ss:

On this      day      , 1994, before me personally appeared **Philip Marshall, 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:

COUNTY OF:

ss:

On this *21<sup>st</sup>* day *July*, 1994, before me personally appeared **James G. Parker** 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.

*Robin A. Estleford*

**ROBIN A. ESTLEFORD**  
Notary Public, State of New York  
Qualified in Wayne Co., No. 4968263  
Commission Expires June 18, 19*96*

STATE OF:

COUNTY OF:

ss:

On this      day      , 1994, before me personally appeared **Richard Scalfani** 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:

COUNTY OF:                      ss:

On this       day       , 1994, before me personally appeared **Philip Marshall, 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:

COUNTY OF:                      ss:

On this       day       , 1994, before me personally appeared **James G. Parker** 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*

COUNTY OF: *ERIE*      ss:

On this *20* day *July*, 1994, before me personally appeared **Richard Scalfani** 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.



THOMAS J. PASSEK  
NOTARY PUBLIC STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires Oct. 31, 1994