

**NASD REGULATION, INC. AWARD**

**Office of Dispute Resolution**

**In the Matter of the Arbitration Between**

**Name of Claimant**

Lorraine Hochman

**Case No. 93-04703**

**Names of Respondents**

Barron Chase Securities  
Neal Moskowitz

**REPRESENTATION OF PARTIES**

For Claimant: Donald R. Spadaro, Esq., of the Law Offices of Donald R. Spadaro, Fort Lauderdale, Florida.

For Respondent Barron Chase Securities ("BCS"): Eugene Michael Kennedy, Esq., Fort Lauderdale, Florida.

For Respondent Neal Moskowitz: Marc S. Nurik, Esq., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed: October 29, 1993. Claimant's Submission Agreement signed: December 30, 1993.

Statement of Answer and Motion to Dismiss filed by Respondent Moskowitz: May 18, 1994. Respondent Moskowitz' Submission Agreement signed April 18, 1994.

Statement of Answer filed by Respondent BCS: May 18, 1994. Respondent BCS's Submission Agreement signed April 20, 1994.

**HEARING INFORMATION**

A telephonic pre-hearing conference was conducted on March 23, 1995 with the full panel presiding. The evidentiary hearing was conducted on April 6 and 7, 1998, in Fort Lauderdale, Florida for a total of four sessions.

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### **CASE SUMMARY**

Claimant alleged the following: Claimant was a novice investor who relied on the representations of Respondent Moskowitz, acting as the agent of BCS, in making her investment decisions. Respondent Moskowitz, acting as the agent of BCS, made misrepresentations of material facts and omitted to state material facts in order to induce Claimant to invest a substantial sum through the purchase of a note of Tower Financial Corporation. The misrepresentations and omissions regarded safety, value, and the term of the investment. Respondent Moskowitz, acting as the agent of BCS, also misrepresented that Claimant was qualified to make the purchase although, in order to be so qualified, an investor was required to be an "accredited investor." Claimant was not an "accredited investor." Respondents' actions constituted breach of fiduciary duty, breach of contract, fraudulent misrepresentation, and negligent misrepresentation. Claimant requested damages and rescission pursuant to Sections 517.211 and 517.301, Florida Statutes and the theory of Respondeat Superior.

Respondent BCS denied the allegations set forth in the Statement of Claim and specifically asserted the following: The claim was frivolous and was filed in bad faith in order to recover from a poor investment decision. Claimant was fully aware of the risks of the investment. She was also was fully qualified and suitable under the terms and conditions of the investment and all applicable state and federal statutes and the rules and regulations promulgated thereunder.

Respondent Moskowitz denied the allegations set forth in the Statement of Claim and specifically asserted the following: The claim was frivolous and was filed in bad faith. Claimant was fully aware of the risks of the investment. She also was fully qualified and suitable under the terms and conditions of the investment and all applicable state and federal statutes and the rules and regulations promulgated thereunder. Respondent Moskowitz disclosed the nature of the investment, its risks, and financial requirements and made no misrepresentations to the Claimant.

### **RELIEF REQUESTED**

Claimant requested an award of damages and rescission in the amount of \$50,000.00, consequential damages pursuant to Section 517.211(3), Florida Statutes associated with bringing this action, plus attorney's fees pursuant to Section 517.211(6), Florida Statutes.

Respondent BCS requested a dismissal of all claims, and an award of costs and attorney's fees.

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Respondent Moskowitz requested a dismissal of all claims.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. Claimant made a motion to permit the telephonic testimony of a disabled witness which was granted.
2. 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 originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

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

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's request for attorney's fees is denied.
3. Respondent BCS's requests for attorney's fees and costs are denied.

### **FORUM FEES**

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$2,500.00 (one pre-hearing conference: \$500.00 plus four hearing sessions x \$500.00 per session).

1. Claimant is assessed the sum of \$1,250.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. of \$750.
2. Respondents are assessed the sum of \$1,250.00, jointly and severally, which shall be paid to NASD Regulation, Inc.

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3. Pursuant to Rule 10319 of the Code, Respondent BCS shall pay to NASD Regulation, Inc. the sum of \$500.00 representing payment of the postponement fee for the hearing scheduled for May 8, 9, and 10, 1995. NASD Regulation, Inc. shall retain the sum of \$500.00, deposited by Respondent Moskowitz, representing payment of the postponement fee for the hearing scheduled for September 15, 16, and 17, 1997.

**OTHER FEES**

Pursuant to Rule 10332 of the Code, Claimant has paid to NASD Regulation, Inc. the \$150.00 claim filing fee previously invoiced.

**Fees are payable to NASD Regulation, Inc.**

Concurring Arbitrators' Signatures

/s/

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Myron Dunay, Esq.  
Public Arbitrator, Presiding Chair

/s/

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Michael Lau  
Public Arbitrator

/s/

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Terrence W. Grant  
Industry Arbitrator

Date of Decision: 6-16-98