

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

**William J. and Catherine M. Sullivan**

**vs.**

**Award No.  
93-05383**

**Name of Respondents**

**Richard Cedrone  
Fulton Ferracute Capital Corp.  
Amerinational Financial Services Inc.  
Marc Riviello  
Peter A. Provence  
Jerome M. Schneider  
National Financial Services Corp.**

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**REPRESENTATION**

**For Claimant, William J. Sullivan and Catherine M. Sullivan ("Claimants"), Harvey R. Peters, Esq., located in Boston, Massachusetts.**

**For Respondents, Peter A. Provence ("Provence"), Marc Riviello ("Riviello") and Jerome M. Schneider ("Schneider") (collectively "Respondents"), Eric John Witmeyer, Esq., located in Los Angeles, California.**

**For Respondent, National Financial Services Corporation ("NFSC"), David C. Boch, Esq., located in Boston, Massachusetts.**

**See Other Issues Considered And Decided for additional information.**

**CASE INFORMATION**

**Statement of Claim was filed on December 27, 1993.**

**Claimants' Submission Agreement was signed on December 21, 1993.**

**Three Amended Statements of Claim were filed on October 2, 1995, July 6, 1995 and January 10, 1996.**

**Statement of Answer was filed by Respondent Amerinational Financial Services, Inc. on March 16, 1994.  
Statement of Answer and Motions to Dismiss and Sever was filed by Respondent Quest Capital Strategies, Inc. was filed on March 3, 1994.**

**Statement of Answer was filed by Respondent Provence on January 29, 1996.**

**Statement of Answer was filed by Respondent Schneider on January 29, 1996.**

**Statement of Answer was filed by Respondent Riviello on February , 1996.**

**Statement of Answer was filed by Respondent NFSC on February 27, 1996.**

**Respondent Amerinational Financial Services' Submission Agreement was signed on March 14, 1994.**

Respondent Quest's Submission Agreement was signed on March 3, 1994.  
Respondent Riviello's Submission Agreement was signed on February 2, 1996.  
Respondent Provence did not execute a Submission Agreement.  
Respondent NFSC did not execute a Submission Agreement.

### **HEARING INFORMATION**

Hearing Dates/Sessions:      September 13, 1995 - 1 session  
   April 29, 1996      - 2 sessions  
   April 30, 1996      - 2 sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, Massachusetts.

### **CASE SUMMARY**

In their Statement of Claim, Amended Statement of Claim and Further Amended Statement of Claim, Claimants make claims for losses of \$186,885. Claimants allege that the losses are the result of Respondents' churning, excessive and unsuitable trading, fraud, misappropriation of funds, concealment, failure to supervise and, in the case of Respondent National Financial Services Corporation, wrongful transfer of Claimant's securities and funds into an account controlled by Respondent Cedrone. Claimants seek to recover their losses, plus the value of lost investment opportunity, punitive damages, interest and costs, including attorney's fees.

Respondent Riviello denies the allegations of Claimants and asserts that any losses suffered by Claimant were the fault of Respondent Cedrone. Respondent Provence also denied the allegations of Claimants in his answer stating that he was unaware of the matters claimed by Claimants and acted properly towards Claimants. Respondent Schneider also filed an answer taking substantially the same position as Respondent Provence. Amerinational Financial Services, Inc., (formerly Robertson Securities Corp.) also denied the allegations of Claimants and asserts that the actions alleged to have caused injury to Claimants were the result of action by third parties without its knowledge or consent. National Financial Services Corporation filed a response to Claimants' Further Amended Statement of Claim requesting that all claims against it be dismissed and asserting that Claimants' claims are barred by the statute of limitations, that it had no relationship with Claimants and owes them no duty and that under industry custom and by contract, it took all instructions as to Claimants' account from Respondent Amerinational, not from Claimants. Respondents Cedrone and Fulton Ferracute Capital Corp. did not file answers.

### **RELIEF REQUESTED**

Claimants seek compensatory relief for \$186,885, plus the value of their lost investment opportunity, punitive damages, interest, and their cost of bringing this action, including attorney's fees from Respondents.

Respondent, NFSC made a Motion to Dismiss all claims against NFSC. Respondents Provence, Riviello and Schneider also made Motion to Dismiss all claims against them individually.

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

The parties who appeared in this arbitration have agreed that the Award in this matter may be executed

in counterpart copies and the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Respondents Cedrone and Fulton Ferracuta Capital Corp. did not appear, nor were they represented, at original remains on file with the NASD. the hearing. Respondent Amerinational was initially represented by Eric J. Witmeyer, Esq. However, he withdrew his representation and Amerinational was not represented at the hearing. Although Respondents Provence, Riviello and Schneider are either now or formerly principals and/or officers of Amerinational, they appeared at the hearing individually only and not as representatives of Amerinational. Mr. Witmeyer continued to represent Respondents Provence, Riviello and Schneider individually.

Arbitrator S. Lawrence Gwin, Jr., made a disclosure to the parties on the record on the hearing day of April 29, 1996, and stated his belief that the matter disclosed would not prevent him from acting impartially and without bias as an arbitrator in this case. After discussion on the record, the parties present stated that they had no objection to Mr. Gwin's service as arbitrator.

On the hearing day of April 30, 1996, Respondent NFSC made a motion to dismiss all claims with respect to NFSC, which Claimants opposed. Respondents Provence, Riviello and Schneider also made a Motion to Dismiss all claims against them individually, which Claimants also opposed. After oral argument, the panel took the motions under advisement, except the motion to dismiss all claims against Respondent Provence individually was granted. In all other respects, the motions are hereby denied.

The panel dismisses all claims against Respondent Quest Capital Strategies, Inc., because Claimants have entered into a settlement of those claims with Quest Capital Strategies, Inc.

### **AWARD**

The panel makes the follow observations, not for the purposes of expressing findings of fact or legal conclusions, but in order to explain key elements of the rationale behind the award.

Respondent Cedrone engaged in fraud and deceit in making and handling the investments and funds of Claimants. He made and concealed risky and unsuitable investments in Claimants' accounts; misrepresented one of Claimants' investment objectives as speculation; forged Claimants' signatures to partnership, account opening and account transfer documents; and converted at least \$19,700 of Claimants' funds to his own personal use. Respondent Cedrone's fraudulent actions caused losses to Claimants of approximately \$195,000. The award, however, reflects settlement amounts received by Claimants of approximately \$30,000 and the fact that losses of approximately \$25,000 suffered while Respondent Cedrone was at the predecessor of Respondent Fulton Ferracuta Capital Corp. were not pursued at the hearing. Accordingly, also, no award is made against Respondent Fulton Ferracuta Capital Corp.

Respondent Amerinational failed to supervise adequately the activities of Respondent Cedrone by not properly monitoring the opening of the Beverly Hills Hedge Fund by Cedrone, the transfer of funds from Claimants' account to the Beverly Hills Hedge Fund (a discretionary account), the high level of options and other risky trading in the account, and withdrawals by Cedrone from the Beverly Hills Hedge Fund (all of this activity being shown in monthly statements which Respondent Riviello claims to have reviewed as part of his supervision of Cedrone). Although Respondent Schneider was responsible for

Riviello was directly responsible for the supervisory duties which were not adequately carried out with respect to Cedrone, no award is made against them individually because they acted in good faith within the scope of their employment duties. However, Amerinational is responsible, as the broker-dealer and employer of Cedrone, for the supervisory shortcomings.

Some of the losses suffered by Claimants may have been prevented had Respondent National Financial Services Corporation required signature guarantees, notarization or other verification of authenticity as to the unauthorized transfer instructions which formed the basis of the transfer by National Financial Services Corporation from Claimant's account to the Beverly Hill Hedge Fund account controlled by Cedrone. Claimants had an account relationship with National Financial Services Corporation and thus would ordinarily be entitled to protection against unauthorized transfers out of their account, as occurred here. However, the account opening document which was signed by Claimants clearly made Amerinational the agent of Claimants in all dealings with National Financial Securities Corporation to their accounts. Accordingly, National Financial Securities Corporation was entitled to rely on instructions received from Amerinational regarding transfers from the account. Thus, under the circumstances here, National Financial Securities Corporation is not responsible for any of the losses suffered by Claimants.

The award against Cedrone and Amerinational is calculated as follows: \$140,000 for the losses Claimants suffered during relevant periods in 1991 and 1992, plus a factor for interest or lost investment opportunity to the date of their award of \$30,911, for a total of \$170,911.

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

1. Respondents Richard Cedrone and Amerinational Financial Services, Inc., are hereby jointly and severally liable to Claimants in the amount of One Hundred Seventy Thousand Nine Hundred Eleven Dollars and Zero Cents (\$170,911.00).
2. Respondents Richard Cedrone and Amerinational Financial Services, Inc., are further jointly and severally liable to Claimant for interest at the rate of twelve per cent (12%) per annum on the total award from the date of this award to the date of payment of this award.
3. Respondents Marc Riviello, Jerome Schneider, Fulton Ferracute Capital Corp. and National Financial Services Corporation are found not to be liable to Claimants for any award.
4. All other claims, including claims for costs, attorneys' fees and punitive damages are denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the panel has decided to allocate forum fees as follows:

Non-refundable Filing Fee:	\$200.00
Hearing Session Deposit:	\$3,750.00 (5 hearing sessions at \$750.00 per session)
Total Fees:	\$3,950.00

1. Claimants previously deposited \$1,725.00 and are entitled to a refund of \$975.00, minus \$750.00 for postponement of the hearings that were scheduled for December 14 and 15, 1995.

2. Respondent National Financial Services Corporation is assessed \$3,950.00 in forum fees. Respondent National Financial Services Corporation shall satisfy the fees assessed by reimbursing claimants \$975.00 and by remitting the balance \$2,975.00 to the NASD.

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

**ARBITRATION PANEL**

David Plimpton, Esq.	-	Public Chairperson
S. Lawrence Gwin, Jr.	-	Public Panelist
Mark J. Gianno, CPA	-	Industry Panelist

Concurring Arbitrator's Signature

  
David Plimpton, Esq.

Date of Decision: June 18, 1996

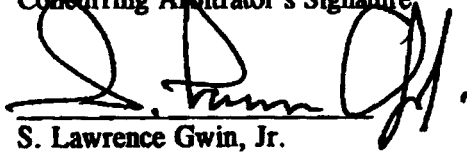
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