

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimant

Evelyn Berezin

94-00111

Name of Respondents

Unterberg Harris, L.P. and Brian Finnerty

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**REPRESENTATION**

For Claimant: Peggy Kerr, Esq., a sole practitioner, New York, NY

For Respondents: Geoffrey Potter, Esq. of the law firm of Kramer, Levin, Naftalis, Nessen, Kamin & Frankel, New York, NY

**CASE INFORMATION**

Statement of Claim filed: January 11, 1994

Claimant's Submission Agreement signed on: December 28, 1993

Respondents' Joint Statement of Answer filed: May 5, 1994

Respondent, Unterberg Harris, Inc.'s Submission Agreement signed on: May 11, 1994

Respondent, Brian Finnerty's Submission Agreement signed on: May 4, 1994

**HEARING INFORMATION**

Hearing dates/sessions:	November 7, 1995	2 Sessions
	December 18, 1995	1 Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that she maintained a brokerage account with Respondent Unterberg Harris ("Unterberg"), and that her Account Representative was Respondent Brian Finnerty ("Mr. Finnerty"). Further, Claimant alleged that the sole investment in her account at Unterberg consisted of shares of Electronic Information Systems, Inc. ("EISI") common stock.

Claimant alleged that in mid-December 1992 she informed Mr. Finnerty that she was advised by her tax accountant not to realize any significant capital gains in 1992, and that any such gains should be realized in 1993. Claimant further alleged that she instructed Mr. Finnerty to sell 50,000 shares of EISI at the earliest possible date in 1993.

Claimant alleged that on or about December 28, 1992, Mr. Finnerty advised Claimant that he had located a buyer for the 50,000 EISI shares and that the settlement date for such transaction, January 4, 1993, would constitute the relevant taxable event. Claimant further contended that she reasonably relied on Mr. Finnerty's representations that the proposed sale would be a 1993 transaction for her income tax purposes.

However, Claimant alleged that her Form 1099 and 1992 Year End Summary statement reflected that the sale of the 50,000 EISI shares in question had been recorded as a taxable event on December 28, 1992, the trade date. Consequently, Claimant alleged that Mr. Finnerty's representations caused her to incur unanticipated tax liabilities for 1992, loan interest and costs, additional accountant's fees and damages.

Finally, Claimant alleged that Unterberg was liable to her for approximately \$100,000.00 as a result of Mr. Finnerty's failure to follow her specific instructions regarding the sale of 50,000 shares of EISI.

Respondents maintained that Claimant was a sophisticated investor. As such, Respondents contended that Claimant should be accountable for her actions and that she should have relied on the advice of her accountant for any tax related issues concerning her trading.

Unterberg maintained that Mr. Finnerty did not make any representations to Claimant regarding the tax implications of the sale or for what year the sale would be taxable. Finally, Respondents maintain that Claimant's instructions with respect to the 50,000 shares of EISI stock were not violated and that all claims should be dismissed in their entirety.

### **RELIEF REQUESTED**

Claimant requested:

- 1) Joint and several damages in the amount of \$100,000.00;
- 2) Costs of the arbitration;
- 3) Attorney's fees; and,
- 4) Expert witnesses and all other costs and expenses attributable to Respondents' misconduct.

Respondents requested that all claims be dismissed in their entirety.

### **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 originals remain 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) Respondents be and hereby are jointly and severally liable and shall pay to the Claimant the sum of \$19,682.81;
- 2) All parties are to bear their respective costs; and,
- 3) All other requests for relief are denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Total Forum Fees:           \$1500.00     (3 Sessions x \$500.00)

- 1) Respondents, Unterberg Harris and Brian Finnerty are jointly and severally assessed the sum of \$750.00 representing one-half total forum fees due. Respondents be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$750.00.
- 2) Claimant is assessed the sum of \$750.00 representing one-half the total forum fees due, less \$500.00 previously paid, leaving \$250.00 due. Claimant be and hereby is liable and shall pay to the NASD the sum of \$250.00

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

**ARBITRATORS' SIGNATURES**

*Robert Herschman*

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Robert Herschman, Esq.  
Public Chairperson

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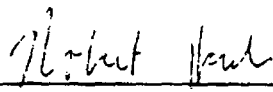
Kenneth Felder  
Public Arbitrator

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James Noone  
Industry Arbitrator

Date of decision: February 29, 1996

I, **Robert Herschman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

  
\_\_\_\_\_  
Robert Herschman, Esq.

I, **Kenneth Felder**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
Kenneth Felder

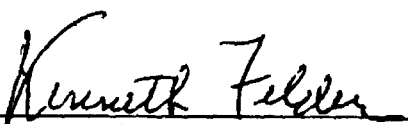
I, **James Noone**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

\_\_\_\_\_  
James Noone

NASD Date of Decision: February 29, 1996

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Robert Herschman, Esq.  
Public Chairperson

  
\_\_\_\_\_  
Kenneth Felder  
Public Arbitrator

\_\_\_\_\_  
James Noone  
Industry Arbitrator

Date of decision: February 29, 1996

I, **Robert Herschman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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Robert Herschman, Esq.

I, **Kenneth Felder**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

  
Kenneth Felder

I, **James Noone**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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James Noone

NASD Date of Decision: February 29, 1996

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
Robert Herschman, Esq.  
Public Chairperson

\_\_\_\_\_  
Kenneth Felder  
Public Arbitrator

  
\_\_\_\_\_  
James Noone  
Industry Arbitrator

Date of decision: February 29, 1996

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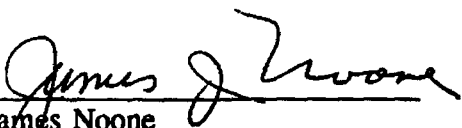
Robert Herschman, Esq.

I, **Kenneth Felder**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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Kenneth Felder

I, **James Noone**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

  
James Noone

NASD Date of Decision: February 29, 1996