

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Fannie Monetti
Olga Monetti

94-01536

Name of Respondent(s)

National Financial Services Corp.
Philip Eitman
Steven Eitman
Alan Beutler

REPRESENTATION

For Claimants Olga Monetti and Fannie Monetti ("Claimants"), appeared Stuart C. Goldberg, Esq. of the firm Deutsch & Lipner located in Garden City, New York.

For Respondent National Financial Services Corp. ("NFSC"), appeared Mathew Farley, Esq. of the firm Shanley & Fisher, located in New York, New York.

For Respondent Alan Beutler ("Beutler"), appeared Robert Marks, Esq. of the firm Bernstein & Marks, located in Newark, New Jersey.

For Respondent Steven Eitman appeared Peter Safirstein, Esq., of the firm Chapman, Henkoff, Kessler, Peduto & Saffer located in Roseland, New Jersey. Steven Eitman appeared Pro Se after January 26, 1996.

For Respondent Philip Eitman appeared Steven Lapidus, Esq., of the firm Robinson, St. John & Wayne, located in Newark, New Jersey. Philip Eitman appeared Pro Se after January 19, 1996.

CASE INFORMATION

Statement of Claim filed: April 21, 1994.

Amended Statement of Claim filed: May 31, 1994.

Second Amended Statement of Claim filed: September 13, 1994.

Third Amended Statement of Claim filed: June 16, 1995.

Claimants' Submission Agreements signed on: April 21, 1994.

Statement of Answer filed by Respondent Philip Eitman on: November 21, 1994

Amended Statement of Answer filed by Philip Eitman on: December 6, 1994

Respondent Philip Eitman's Submission Agreement signed on: November 2, 1994.

Statement of Answer filed by Respondent Steven Eitman on: December 13, 1994.

Respondent Steven Eitman's Submission Agreement signed on: December 14, 1994.

Statement of Answer filed by Respondent NFSC on: April 4, 1994.

Amended Statement of Answer filed by NFSC on: September 28, 1994.

Further Amended Statement of Answer filed by NFSC on: June 27, 1995.

Respondent NFSC's Submission Agreement signed on: July 14, 1994.

Statement of Answer filed by Respondent Alan Beutler on: August 25, 1995.

Respondent Alan Beutler did not execute a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	October 24, 1995	-	One Session
Hearing Dates/Sessions:	November 14, 1995	-	One Session
	November 15, 1995	-	One Session
	December 5, 1995	-	One Session
	December 14, 1995	-	Two Sessions
	December 15, 1995	-	Two Sessions
	December 20, 1995	-	Two Sessions
	December 21, 1995	-	Two Sessions
	January 30, 1996	-	Two Sessions
	June 10, 1996	-	Two Sessions
	June 11, 1996	-	Two Sessions
	June 12, 1996	-	Two Sessions
	June 13, 1996	-	Two Sessions
	June 14, 1996	-	Two Sessions

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

CASE SUMMARY

Claimants alleged that they opened accounts with High Yield Management Securities ("High Yield") on or about February 27, 1991. Claimants further alleged that Respondent Philip Eitman was the owner and president of High Yield, Respondent Steven Eitman was the vice president of High Yield and that Respondent Beutler was a senior vice president of High Yield and its derivative trader. Claimants contended that Respondent NFSC was not only the clearing broker for High Yield, but had far greater contact and responsibilities vis a vis the claimants' brokerage accounts, as it was the margin lender and materially assisted High Yield in operations, finances and maintaining the monthly brokerage statements. Claimants further contended that their investment objectives were for a higher rate of interest than from their CD holdings and for absolute safety of principal and that they only wanted to invest in United States Government securities backed by the full faith and credit of the federal government. Claimants alleged that the respondents recommended and sold them United States Government securities which were in fact esoteric derivatives that performed as the economic equivalent of commodity futures. Claimants further alleged that the margin balances in the accounts went up to 300% of equity at the time of the purchasing of these securities. Claimants contended that the monthly brokerage statements they received from respondents were false and misleading in that the security position values were not accurate. Claimants contended that NFSC improperly extended margin credit to claimants and that NFSC had knowledge of High Yields' excessive mark-ups on sales to the claimants.

Respondent Philip Eitman maintained that although he was the president and sole shareholder of High Yield during the time period in which claimants maintained accounts there, he had no contact with claimants during that period, nor was he involved with the management or direct supervision of claimants' accounts. Respondent Philip Eitman further maintained that he did not participate in, or have knowledge of, any misrepresentations, omissions, or fraud with respect to claimants' accounts. Respondent Philip Eitman contended that he satisfied any duty he might have owed to Claimants by generally supervising the activities of High Yields' approximately 60 registered representatives, and, in good faith, allowing them to recommend "derivative securities" in appropriate circumstances. Respondent Philip Eitman further contended that he established a comprehensive system of training, supervision, and compliance for all registered representatives. Philip Eitman maintained that specifically regarding derivatives, he and other senior personnel, through the use of reports of major brokerage houses and other information, educated and trained High Yield's registered representatives about these investment opportunities so that they could make suitable recommendations and properly advise clients.

Respondent Steven Eitman maintained that he was responsible for administrative areas of High Yield. Respondent Steven Eitman further maintained that he was not involved with the solicitation, management or supervision of claimants' accounts. Respondent Steven Eitman denied that he was familiar with claimants' investment objectives and investment history and additionally denied that he was involved in recommending investments to the claimants or causing others to make such recommendations.

Respondent Beutler maintained that he never met with, spoke to or had any contact with claimants. Respondent Beutler further maintained that he was not aware of the contents of claimants' portfolio, nor did he have knowledge of their investment objectives. Respondent Beutler contended that he was not a registered principal nor senior vice president of High Yield, nor was he a derivative trader in connection with claimants' portfolio. Respondent Beutler maintained that his sole function was to obtain estimated values of securities.

Respondent NFSC maintained that High Yield had the day to day brokerage relationship with the claimants and High Yield alone was responsible for the generation, execution and reporting of transactions for the claimants' account. Respondent NFSC further maintained that in opening their account with High Yield, claimants were informed and fully understood that NFSC was High Yields' clearing broker and that claimants' accounts would be carried on NFSC's books as accounts at High Yield. Respondent NFSC contended that the relationship among NFSC, High Yield and claimants was structured so that NFSC never had any direct business dealings with the claimants. Respondent NFSC denied that any circumstances or dealing in any way enlarged or enhanced whatever duties NFSC owed the claimants pursuant to its role as High Yields clearing broker.

In its counterclaim against claimants, NFSC alleged that upon the declines in market prices in April of 1994, margin calls issued and went unsatisfied. Respondent NFSC alleged that positions were liquidated and each claimant is presently indebted to NFSC for debit balances.

RELIEF REQUESTED

Claimant Fannie Monetti requested damages in the amount of \$1,054,117.03. Claimant Olga Monetti requested damages in the amount of \$1,814,556.74. Claimants also requested punitive damages and the removal of debit balances from their accounts.

Respondent NFSC requested that the claims against it be dismissed and that its counterclaim for funds owed by the claimants be awarded in full. Respondent Philip Eitman requested that claimants' Statement of Claim be dismissed. Respondent Alan Beutler requested that claimants' Statement of Claim be dismissed. Respondent Steven Eitman requested that claimants' Statement of Claim be dismissed.

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 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:

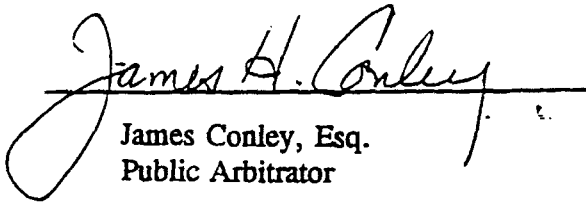
1. Respondent Philip Eitman be and hereby is liable and shall pay to Claimant Fannie Monetti \$407,000.00 plus interest at 6% from October 1, 1992.
2. Respondent Philip Eitman be and hereby is liable and shall pay to Claimant Olga Monetti \$621,000.00 plus interest at 6% from October 1, 1992.
3. All claims against Respondents Steven Eitman, Alan Beutler, and National Financial Services Corporation be and hereby are denied.
4. The counterclaim of Respondent National Financial Services Corporation be and hereby is denied.
5. Each party shall bear their respective costs, including attorney's fees.
6. All other claims be and hereby are denied.

FORUM FEES

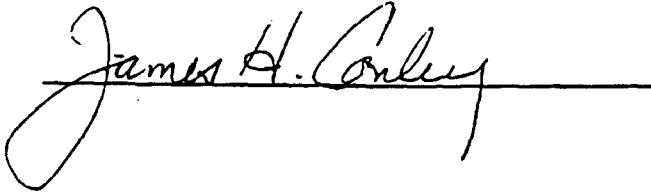
24 sessions x \$1,000.00 = \$24,000.00

1. Respondents NFSC, Philip Eitman, Steven Eitman and Alan Buetler be and hereby are jointly and severally liable for \$24,000.00 in outstanding forum fees.

ARBITRATORS' SIGNATURES


James Conley, Esq.
Public Arbitrator

I, James Conley do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: July 25, 1996



Richard Baldwin, Esq.
Public Chairperson

I, Richard Baldwin, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: July 25, 1996



Howard Levine
Industry Arbitrator

I, Howard Levine, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: July 25, 1996