

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

John Turi, Individually and as Trustee
of American Colonial Press, Inc.
Employee Pension Trust

vs.

Case No.
94-02384

Name of Respondents

Philip Eitman and Gary Hollander

REPRESENTATION

For Claimant John Turi, Individually and as Trustee of American Colonial Press, Inc., Employee Pension Trust, ("Turi" and collectively "Claimants"), appeared George L. Mahr, Esq., located in Madison, New Jersey.

For Respondent Philip Eitman ("Eitman"), appeared Steven L. Lapidus, Esq., from the law firm Robinson, St. John & Wayne, located in Newark, New Jersey.

For Respondent Gary Hollander ("Hollander"), appeared Peter T. Ziering, Esq., of the firm Nudelman, Nudelman & Ziering, located in West Orange, New Jersey.

CASE INFORMATION

Claimant's Statement of Claim was filed on June 21, 1994.

Claimant John Turi as Trustee's Submission Agreement was signed on June 10, 1994.

Claimant John Turi as Individual's Submission Agreement was signed on November 2, 1994.

Respondent Philip Eitman's Statement of Answer was filed on November 14, 1994.

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

Respondent Gary Hollander's Statement of Answer was filed on September 28, 1994.

Respondent Gary Hollander's Submissions Agreement was signed on September 29, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	July 22, 1997	-	2 sessions
	October 12, 1998	-	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants state that Respondent Eitman was the president and majority shareholder of High Yield Management Securities, Inc. ("HYM"), a company through which Claimants' investments were purchased, sold, and managed. Claimants further state that Respondent Hollander was a securities representative and financial consultant with HYM. Claimants allege that Respondents, as financial consultants, solicited Turi, in his capacity as president of American Colonial Press, Inc., in August 1984 to manage the company's Corporate Investment Account ("Corporate Account").

Claimants allege that, over the course of a ten-year relationship, there was a clear understanding established between Respondents and Turi, acting as Trustee, that the types of investments selected for the Corporate Account would be conservative and provide safety of principle, income, and long-term growth. Claimants further allege that as a result of Respondents recommendations and prior corporate investment history, Turi developed a relationship of trust with Respondents. Claimants assert that as a result of this relationship, Turi authorized Respondents to manage the American Colonial Press, Inc., Employee Pension Trust ("Employee Pension Trust") in September, 1989. Claimants state that Respondents' management of this account lasted approximately five years with the continued understanding of conservative, safe, and income producing investments.

Claimants aver that during November 1993, Hollander, under the supervision of Eitman, solicited Turi to invest \$94,600.00 in the mortgage derivative pool Federal National Mortgage Association Trust ("FNMAT"). Claimants assert that this represented almost one-half of the assets maintained in the Employee Pension Trust account. Claimants also assert that, due to the relationship of trust which had been established between Turi and Respondents, Respondents also advised Turi to purchase FNMAT mortgage derivatives with his own personal funds. Claimants allege that, as a result of this investment advice, Respondents knowingly failed to follow the rules promulgated by Section 501 of the Department of Labor Laws which require that securities representatives invest pension fund proceeds in conservative, diversified, income-producing securities.

Claimants contend that Respondents encouraged Turi to sell a safe, diversified, income-producing mutual fund in order to purchase undiversified FNMAT. Claimants maintain that Respondents misrepresented to Turi that FNMAT was a conservative, short-term investment, although Respondents knew FNMAT was a highly speculative and volatile derivative. Claimants further maintain that Hollander was instructed and encouraged by Eitman to omit these facts to Turi, thereby breaching their fiduciary duty to Claimants.

Hollander denies any allegation of misrepresentation or unsuitability concerning Claimants' purchases of Collateralized Mortgage Obligations ("CMO") at HYM. Hollander contends that he presented Claimants with the information in his possession, and Turi made the investment decisions. Hollander asserts that Claimants were aware of the products' risks, that the performance was based only on projections, and that there was no such performance guarantee for the CMOs. Hollander further asserts that Claimants' causes of action are barred by the principles of estoppel, waiver, laches, statute of limitations, ratification, and contributory negligence. Hollander also maintains that the damages claimed in the Statement of Claim are not the result of, or caused by, any act on the part of Hollander.

Eitman contends that he owed no duty to Claimants since he had no contact with Claimants during the time in question, nor was he involved with the management or direct supervision of Claimants' accounts. Eitman further contends that, to the extent that he had a duty to Claimants, he satisfied this duty by generally supervising the activities of HYM's representatives and, in good faith, allowed the representatives to recommend CMOs. Due to the lack of contact with Claimants, Eitman also contends that he had no knowledge of any misrepresentations or omissions, if any, made to them. Respondent Eitman states that Claimants' knowingly and voluntarily assumed the market risks when investing, and that any losses were wholly or partially due to Claimants'. Eitman asserts that Claimants' recovery is barred by the doctrines of waiver, estoppel and laches, as well as by the statute of limitations.

RELIEF REQUESTED

Claimant requests compensatory damages in the amount of \$200,000.00, an unspecified amount of punitive damages, attorney's fees and expert fees, in addition to any other relief which the arbitration panel deems just.

Respondent Hollander requests Claimants' Statement of Claim should be dismissed with prejudice, with the costs of arbitration to be assessed against Claimants.

Respondent Eitman requests 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 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. Claimants' claims are hereby denied;
2. All other claims for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the *NASD Regulation Code of Arbitration Procedure ("Code")*, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimants and have assessed the following Forum Fees against Claimants:

4 Hearing Sessions	(Full Panel)	-	\$3,000.00 (@ \$750.00 per session)
Total Fees		-	\$3,000.00

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Fred S. Pieroni	-	Public Chairperson
Harry Weiss	-	Public Panelist
Harry Aronsohn	-	Industry Panelist

CONCURRING ARBITRATOR'S SIGNATURE

Harry Aronsohn

Date of decision: NOVEMBER 19, 1998

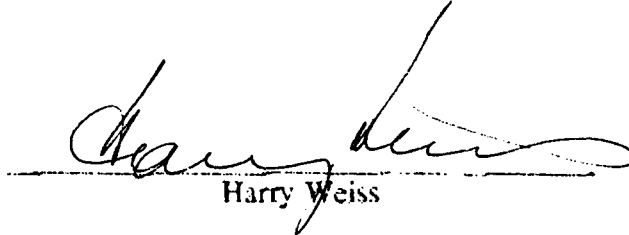
I, **Harry Aronsohn**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Harry Aronsohn

ARBITRATION PANEL

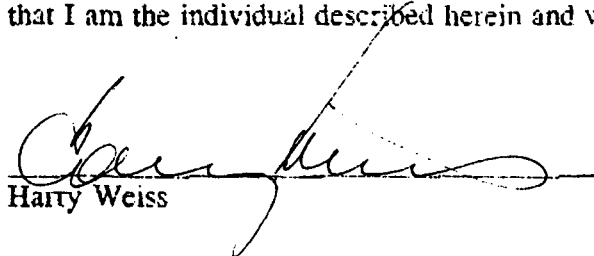
Fred S. Pieroni	-	Public Chairperson
Harry Weiss	-	Public Panelist
Harry Aronsohn	-	Industry Panelist

CONCURRING ARBITRATOR'S SIGNATURE


Harry Weiss

Date of decision: NOVEMBER 19, 1998

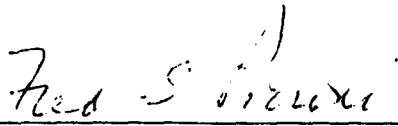
I, **Harry Weiss**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Harry Weiss

ARBITRATION PANEL

Fred S. Pieroni	-	Public Chairperson
Harry Weiss	-	Public Panelist
Harry Aronsohn	-	Industry Panelist

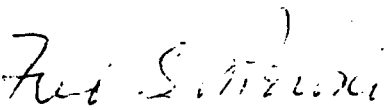
CONCURRING ARBITRATOR'S SIGNATURE



Fred S. Pieroni

Date of decision: NOVEMBER 19, 1998

I, Fred S. Pieroni, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Fred S. Pieroni