

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Charles G. Devine, Michael P. LaVigna, Bernard H. Belle & Susan P. Kirstein, Harland A. Riker Jr. and Ann M. Riker, James A. Synk, John W. Kellar, III, David E. and Marie C. Devine, Barbara Beckingham, James L. Phelps et al (Claimants) vs. Weston Securities Corporation, Joseph Robbat, Jr., Douglas Albert Biggar, Jr., I. Richard Horowitz, Weston Properties Corp, The Finch Group, Inc., Weston Financial Group (Respondents)

Case Number: 94-02395

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimants, Charles Devine, Michael P. LaVigna, Bernard H. Belle & Susan P. Kirstein, Harland A. Riker, Jr. and Ann M. Riker, James A. Synk, John W. Keller, III, David E. and Marie C. Devine, Barbara Beckingham, James L. Phelps, Stephen Crummey, Mario DePalo, Salvatore J. and Grace S. Vinciguerra, Black and Elizabeth Cady, Ara Akanian, Charles Maker and Leslie Schiff-Maker, Ian R.-G. Edmonds, Ellen R. Kokos, Barry D. Silver, Robert a. and Marian W. Newton, Herbert Schanzer, Frederick g. and Cynthia L. Sawin, Philip M. and Suzanne Q. Croel, H. Dustin and Lesley J. Kilgore, George M. and Laetitia A. Woodley, Horace Brownell Chalstrom, Robert P. and Carol A. Turner, Nigel Webb, Barry S. Taylor and Elizabeth Spark, Joycelyn A. Hernandez, Joseph A. Guinta, Joseph P. Zeh, Willow B. Shire, Barry and Merle Spero, Thomas G. and Sandra Gunn, Michael Dennis Graham, John B. Landry, Robert L. and Jacqueline B. Seaman, collectively referred to as "Claimants": Sidney Gorovitz, Esq., Dropkin, Pealman, Leavitt & Rubin, Lexington, Massachusetts.

Respondents, Weston Securities Corporation ("Weston Securities"), Weston Properties Corp. ("Weston Properties"), Weston Financial Group ("Weston Financial"), Douglas Albert Biggar, Jr. ("Biggar"), Joseph Robatt ("Robatt) and I. Richard Horowitz ("Horowitz"), hereinafter collectively referred to as "Respondents": Richard Goren, Esq., Rubin Hay & Gould, Farmingham, Massachusetts and Harvey J. Wolkoff, Esq., Ropes & Gray, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: June 16, 1994

Amended Statement of Claim filed on or about: October 1994

Amended Statement of Claim filed on or about: November 7, 1994

Seconded Amended Statement of Claim filed on or about: June 10, 1998

Motion to Consolidate with 94-1088 filed on or about: December 23, 1994

Reply to Respondents' Counterclaim filed on or about: October 18, 1999

Claimant, Charles Devine, signed the Uniform Submission Agreement: June 15, 1994

Claimants, Michael P. LaVigna and Katherine J. LaVigna, signed the Uniform Submission Agreement: June 13, 1994

Claimant, Bernard H. Belle and Susan P. Kirstein, signed the Uniform Submission Agreement: May 10, 1994

Claimant, Harland A. Riker, Jr. and Ann M. Riker, signed the Uniform Submission Agreement: June 13, 1994

Claimant, James A. Synk, signed the Uniform Submission Agreement: May 27, 1994

Claimant, John W. Kellar, III, signed the Uniform Submission Agreement: May 17, 1994

Claimants, David E. and Marie C. Devine, signed the Uniform Submission Agreement: May 23, 1994

Claimant, Barbara J. Beckingham, signed the Uniform Submission Agreement: May 9, 1994

Claimant, James L. Phelps, signed the Uniform Submission Agreement: May 3, 1994

Claimant, Stephen Crummey, signed the Uniform Submission Agreement: May 7, 1994

Claimant, Mario DePalo, signed the Uniform Submission Agreement: May 20, 1994

Claimants, Salvatore J. and Grace S. Vinciguerra, signed the Uniform Agreement: May 19, 1994

Claimants, Blake and Elizabeth Cady, signed the Uniform Agreement: June 8, 1994

Claimant, Ara Akanian, signed the Uniform Agreement: June 13, 1994

Claimant, Charles Maker, signed the Uniform Submission Agreement: June 13, 1994

Claimant, Leslie Schiff-Maker, signed the Uniform Submission Agreement: June 15, 1994

Claimant, Ian R. G. Edmonds, signed the Uniform Submission Agreement: May 10, 1994

Claimant, Ellen R. Kokos, signed the Uniform Submission Agreement: May 9, 1994

Claimant, Barry D. Silver, signed the Uniform Submission Agreement: June 13, 1994

Claimant, Robert A. and Marian W. Newton, signed the Uniform Submission Agreement: May 9, 1994

Claimant, Herbert Schanzer, signed the Uniform Submission Agreement: May 9, 1994

Claimants, Frederick G. and Cynthia L. Sawin, signed the Uniform Submission Agreement: May 2, 1994

Claimants, Philip M. and Suzanne Q. Croel, signed the Uniform Submission Agreement: June 10, 1994

Claimants, H. Dustin and Lesley J. Kilgore, signed the Uniform Submission Agreement: May 14, 1994

Claimants, George M. and Laetitia A. Woodley, signed the Uniform Submission Agreement: May 23, 1994

Claimant, Horace Brownell Chalmers, signed the Uniform Submission Agreement: June 2, 1994

Claimants, Robert P. and Carol A. Turner, signed the Uniform Submission Agreement: May 20, 1994

Claimant, Nigel Webb, signed the Uniform Submission Agreement: May 4, 1994

Claimants, Barry S. Taylor and Elizabeth Spark, signed the Uniform Submission Agreement: May 16, 1994

Claimant, Joycelyn A. Hernandez, signed the Uniform Submission Agreement: June 9, 1994

Claimant, Joseph A. Guinta, signed the Uniform Submission Agreement: May 17, 1994

Claimant, Joseph P. Zeh, signed the Uniform Submission Agreement: June 15, 1994

Claimant, Willow B. Shire, signed the Uniform Submission Agreement: June 15, 1994

Claimants, Barry and Merle Spero, signed the Uniform Submission Agreement: May 27,

1994

Claimants, Thomas G. and Sandra Gunn, signed the Uniform Submission Agreement: June 14, 1994

Claimant, Michael Dennis Graham, signed the Uniform Submission Agreement: June 14, 1994

Claimant, John B. Landry, signed the Uniform Submission Agreement: June 15, 1994

Claimants, Robert L. and Jacqueline B. Seaman, signed the Uniform Submission Agreement: June 15, 1994

Motions to Dismiss by Respondents on or about: January 9, 1995

Statement of Answer to Claimants' Second Amended Statement of Claim filed by Respondents on or about: July 12, 1999

Motion to Dismiss Claims or for Summary Judgment filed by Respondents on or about: August 23, 1999

Statement of Answer to Amended Statement of Claim filed by Respondents on or about: October 6, 1999

Respondent, Weston Securities, signed the Uniform Submission Agreement: May 6, 1999

Respondent, Weston Financial, signed the Uniform Submission Agreement: May 6, 1999

Respondent, Weston Properties, signed the Uniform Submission Agreement: May 6, 1999

Respondent, Joseph Robatt, Jr., signed the Uniform Submission Agreement: May 6, 1999

Respondent, I. Richard Horowitz, signed the Uniform Submission Agreement: May 6, 1999

Respondent, Douglas A. Biggar, signed the Uniform Submission Agreement: May 6, 1999

CASE SUMMARY

Claimants asserted the following causes of action: violation of Section 12(2) of the Securities Act of 1933 (15 USC Sec.771(2) and M.G.L. Chapter 110A, Section 410(a)(2); breach of fiduciary duty; negligent misrepresentation; breach of the Covenant of Good Faith and Fair Dealing; breach of M.G.L. Chapter 93A, in connection with their investments in hotel condominium units of Nantucket Inn.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants failed to show that any event occurring on or after June 17, 1988 constitutes the purchase or sale of a security; Claimants failed to demonstrate that any of the alleged non-disclosures at issue in this arbitration were material or that Claimants' reliance on such alleged non-disclosures was the proximate cause of any damage to the Claimants; Claimants, George and Laetitia Woodley, Willow Shire, Robert and Jacqueline Seaman, Nigel Webb, and Frederick and Cynthia Sawin should be stricken as Claimants in this action; and, Respondents are entitled to fees and indemnification under the Investor Services Agreement.

Unless specifically admitted in their Answer, Claimants denied the allegations made in the Respondents' Counterclaim and asserted the following defenses: the Counterclaims are barred by the applicable Statutes of Limitation; Respondents are estopped by virtue of their own conduct and actions, and/or by the conduct and actions of their agents and servants,

from pursuing or recovering on their claims in Counterclaim; Respondents waived and/or released any and all rights that they may have against the Claimants; the Counterclaim fails to state a claim upon which relief can be granted; the Investor Services Agreement has been terminated by virtue of the conduct, behavior and actions of Respondents, their agents and representatives, and therefore is null and void.

RELIEF REQUESTED

Claimants requested dismissal of the Counterclaim, and:

Compensatory Damages	\$8,357,209.00
Punitive Damages	\$
Pre-judgment interest	\$6% per annum [section 41(a)]
Interest	\$
Attorneys' Fees	\$ 152,500.00
Other Costs (Deposition transcripts)	\$ 4,412.00 (1/2 of \$8,824.00)
Other Monetary/Non-Monetary Relief if any:	

Respondents requested dismissal of the Statement of Claim and Amended Statement of Claim, and:

Compensatory Damages	\$492,200.00
Attorneys' Fees	\$699,080.75
Other Costs	\$ 74,519.71
Other Monetary/Non-Monetary Relief if any:	

OTHER ISSUES CONSIDERED AND DECIDED

Respondents' Motion to Dismiss and for Summary Judgment pursuant to Rule 10106 of the NASD Code of Arbitration Procedure, was denied by the Panel on October 18, 1999. Respondents also moved to strike certain claimants from the arbitration.

On March 28, 1996, Claimant, Willow B. Shire, dismissed and withdrew his claims against Respondents. On April 30, 1996, Claimant, John B. Landry, signed a Dismissal of Claim, dismissing his claims against Respondents. On December 2, 1999, Claimants' counsel filed a Stipulation of Dismissal, dismissing with prejudice the claims of Thomas Gunn, Sandra Gunn, Catherine LaVigna, Marian Newton, Leslie Maker a/k/a Leslie Schiff, Harland Riker, Ann Riker and Joseph Zeh. On March 23, 2000, Claimants' counsel filed a Stipulation of Dismissal dismissing with prejudice the claims of Donald and Judith Sundue and John and Dolores Driscoll.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions by Claimants dated June 16, 2000 and by Respondents dated June 16, 2000 and June 20, 2000, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims against Respondents are denied;
2. Respondents' Counterclaim against Claimants is denied;
3. No attorneys' fees are awarded to either party;
4. Claimants are jointly and severally liable for one-half of the cost of the deposition transcript, \$4,412.00.
5. Respondents are jointly and severally liable and are responsible for one-half the cost of the deposition transcript, \$4,412.00; and,
6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
Counter claim filing fee	= \$500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$500.00
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Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing conferences with Panel x \$1,500.00	= \$ 4,500.00
Pre-hearing conferences:	
June 29, 1999	1 session
August 25, 1999	1 session
October 15, 1999	1 session
Thirty-one (31) Hearing sessions x \$1,500.00	= \$46,500.00
Hearing Dates:	
October 27, 1999	2 sessions
October 28, 1999	2 sessions

October 29, 1999	2 sessions
December 1, 1999	2 sessions
December 2, 1999	2 sessions
December 3, 1999	2 sessions
March 21, 2000	2 sessions
March 22, 2000	2 sessions
March 28, 2000	2 sessions
March 29, 2000	2 sessions
April 26, 2000	2 sessions
April 27, 2000	2 sessions
May 16, 2000	2 sessions
May 17, 2000	2 sessions
June 1, 2000	2 sessions
June 2, 2000	1 session
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Total Forum Fees	= \$51,000.00

1. The Panel has assessed \$25,500.00 of the forum fees to Claimants, jointly and severally.
2. The Panel has assessed \$25,500.00 of the forum fees to Respondents, jointly and severally.

Fee Summary

Claimants be and hereby are jointly liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$25,500.00
Total Fees	= \$25,800.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Regulation, Inc.	= \$24,000.00

Respondent, Weston Securities Corporation, be and hereby is solely liable for:

Member Fees	= \$500.00
Total Fees	= \$500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 500.00

Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$25,500.00
Total Fees	= \$25,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$25,500.00

All balances are due and payable to NASD Regulation, Inc.

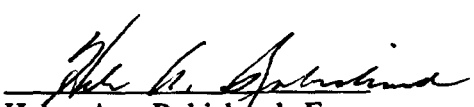
Concurring Arbitrators' Signatures

Edward R. Wiest, Esq.
Public Arbitrator, Presiding Chair

Signature Date

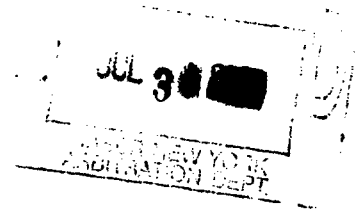
William J. McDonald, Esq.
Public Arbitrator

Signature Date


Helen Ann Robichaud, Esq.
Industry Arbitrator


Signature Date

July 27, 2000
Date of Service (For NASD office use only)



Concurring Arbitrators' Signatures

Edward R. Wiest, Esq.
Public Arbitrator, Presiding Chair

Signature Date


William J. McDonald, Esq.
Public Arbitrator

7/25/00
Signature Date

Helen Ann Robichaud, Esq.
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures



Edward R. Wiest, Esq.
Public Arbitrator, Presiding Chair

27 Jul 100

Signature Date

William J. McDonald, Esq.
Public Arbitrator

Signature Date

Helen Ann Robichaud, Esq.
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)