

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

Donald N. Fosco and Deborah Marinilli

95-00848

Name of Respondents

Brighton Securities Corporation
C. Walter Ries

REPRESENTATION

For Claimants Donald N. Fosco and Deborah Marinilli appeared Frank H. Lloyd, Jr., Esq. to the law firm of Henry W. Williams, Jr., Esq., located in Pittsford, New York.

For Respondents Brighton Securities Corporation and C. Walter Reis appeared Richard G. Curtis, Esq. with the law firm of Lacy Katzen Ryan & Mittleman located in Rochester, New York.

CASE INFORMATION

The Statement of Claim was filed on January 20, 1995.

Claimant's Submission Agreement was signed on January 17, 1995.

A Joint Statement of Answer was filed by Respondents on May 3, 1995 and an Amended Statement of Answer filed May, 1995.

Respondent Brighton Securities Corporation filed a Submission Agreement executed on April 28, 1995. Respondent C. Walter Reis filed a Submission Agreement executed on April 28, 1995.

HEARING INFORMATION

Hearing Dates:	January 13, 1997	-	Two Sessions
	January 14, 1997	-	Two Sessions

The hearing was held at the Raddison Rochester Plaza, 70 State Street located in Rochester, New York.

CASE SUMMARY

Claimant Fosco opened an account with respondent Brighton Securities ("Brighton") in August of 1978. At the time the account was opened, claimant Fosco allegedly advised respondent Reis that he desired secure investments which did not have considerable risk with safety of principle being a primary objective and a continual income stream. Claimant also alleged that he advised Reis that the investments should be liquid so that it could be readily sold if the investment diminished in value. Claimant further alleged that he advised Reis that safety of principle was essential for a retirement account.

In September of 1992, Fosco's son-in-law died leaving an insurance policy with a face amount of \$100,000.00 payable to Fosco's daughter Marinilli. Marinilli was introduced to Reis and Brighton by her father, Fosco. Claimant Marinilli alleged that she advised Reis that she needed a steady stream of income to raise her three young children and that safety of principle was paramount so that eventually the money could also be used for the Marinilli children's college education.

Claimant's alleged that Respondents recommended to the Claimants that they invest their money in Towers Financial Corporation ("Towers") promissory notes. Allegedly, as a result of these recommendations, Fosco invested \$50,000 and Marinilli \$40,000 in Towers. Towers was recommended to Claimants as a suitable investment. Claimant's alleged that Towers was, in fact, a highly speculative and risky investment which was totally illiquid with no market contemplated for the purchase or sale of such shares.

Towers filed for bankruptcy in March, 1993.

At the time the investment was made the security was restricted to accredited investors only which Claimants allegedly were not.

Respondents denied all allegations of wrongdoing alleged in the Statement of Claim. Respondents maintained that Fosco was provided with a written offering memoranda on various investments in August of 1992. Fosco allegedly refused to fully disclose the extent of his personal assets. However, Respondents maintained Fosco did disclose some of his current investments, which indicated Fosco was an experienced investor. Respondents further maintained that Fosco did not decide to make an investment until approximately two months after Reis' contact with Fosco at which time Fosco made the decision to invest in Towers. Fosco also made the decision with respect to the investment by Marinilli, which Respondents maintained was against the advise of Reis.

Additionally, Respondents maintained that Fosco indicated on a subscription agreement for the Towers Financial Corporation Notes that he was an accredited investor with an excess of One Million Dollars in assets. With respect to Marinilli, who was not an accredited investor, Tower Financial Corporation advised that the Notes for Marinilli had to be purchased jointly by Fosco and Marinilli. Accordingly, Fosco and Marinilli executed separate subscription agreements (Fosco in November 1992 and Marinilli in January 1993.)

Respondents admitted that Respondents made the investments in the amounts alleged by the Claimants but denied that these investments were made on the recommendation of either Respondent.

As affirmative defenses Respondents maintained that the Claimants failed to state a claim upon which relief can be granted; that Fosco represented to Respondents that he was an experienced and accredited investor; that Claimants' claims are barred by applicable statute of limitations; and that Claimants' claims are barred because they are members of a putative class of persons in connection with a class action lawsuit currently pending against Towers Financial Corporation in connection with the issuance and sale of said notes; that the claim is barred by the doctrines of ratification, estoppel and waiver; and that any losses sustained by Claimants were caused in whole or in part by their own negligence.

RELIEF REQUESTED

Claimants requested the following relief:

- (a) On behalf of Claimant, Fosco, the principle amount of \$50,000.00, together with the loss of investment opportunity on such funds if they had been invested prudently and in accordance with the investment objectives of said Claimant in suitable securities; and

- (b) On behalf of Claimant, Marinilli, the principle amount of \$40,000.00, together with the loss of investment opportunity on such funds if they had been invested prudently and in accordance with the investment objectives of said claimant in suitable securities; and

attorneys' fees of 1/3 of the amount of such loss necessary to obtain counsel to commence this proceeding.

Claimants further requested exemplary or punitive damages.

Respondents requested that Claimants' claim be dismissed in all respects and that Claimants' be directed to pay Respondents' costs and expenses in connection with this matter, including Respondents' reasonable attorneys' fees.

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.

Prior to the commencement of the arbitration, Respondents renewed their request to stay the arbitration based upon the pendency of a class action with a putative class including the Claimants. Claimants represented that they had no intention of participating in the class action which is presently pending in the United States District Court for the Southern District of New York and it was agreed that Claimants would provide NASD Regulation with a signed statement opting out of the putative class. It was further agreed that this would be provided to NASD Regulation before the panel issued its decision.

On January 23, 1997 counsel for the Claimants provided NASD Regulation with a statement signed by Claimants opting out of the putative class.

Respondents moved to set aside the imposition of a hearing cancellation fee that had been imposed on them for their request to reschedule the hearing originally set in this matter for June 20, 1996. Respondents argued that the hearing would have been rescheduled by NASD Regulation in any event because one of the arbitrators originally assigned to the case was disqualified shortly before the original hearing date, and there was insufficient time to obtain a third arbitrator. The Panel determined that all three arbitrators had in fact been assigned and were available to preside on the original hearing date, and therefore Respondents' motion to set aside the cancellation fee was DENIED.

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:

The Panel finds in favor of the Claimants. Respondents are jointly and severally liable for all damages, in the following amounts:

Claimant Fosco:	
Damages:	\$12,500.00
Interest:	<u>\$ 5,751.00</u>
Subtotal:	\$18,251.00
Attorneys Fees:	<u>\$ 2,500.00</u>
TOTAL	\$20,751.00

Claimant Marinilli:

Damages:	\$40,000.00
Interest:	<u>\$18,404.00</u>
Subtotal:	\$58,404.00

Attorneys Fees:	<u>\$11,680.00</u>
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TOTAL	\$70,084.00
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Claimants' request for an award of punitive damages is hereby denied. The parties will each bear their respective NASD fees and costs.

As a condition precedent to Respondents' obligation to pay the above damages, Claimants must first assign to Respondents, in a manner satisfactory to Respondents' counsel, their respective interests, as of January 15, 1997, in (i) all Towers Financial Corporation promissory notes or other obligations of Towers Financial Corporation or any successor in interest thereto, and (ii) all claims or causes of action of any kind against Towers Financial Corporation and any broker, dealer, or registered representative, or any other person or entity, related to the Towers Financial Corporation promissory notes that were the subject of this arbitration.

FORUM FEES

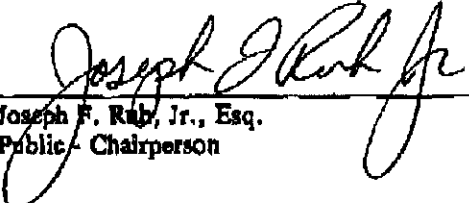
Pursuant to Rule 10332 (c) (formerly Section 43c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$750.00 = \$3,000.00

The Panel has determined that the forum fees shall be assessed equally between claimants and respondents. Therefore, Claimants are jointly and severally liable and shall pay to NASD Regulation \$1,500.00 which represents one-half of the forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation. As a result, the amount due from Claimants is \$750.00. Respondents are jointly and severally liable and shall pay to NASD Regulation \$1,500.00 one-half of the forum fees assessed.

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

ARBITRATOR'S SIGNATURE

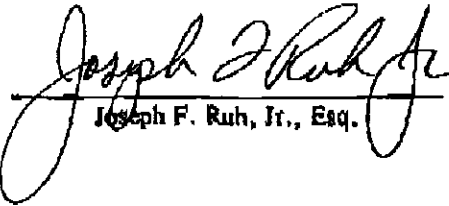


Joseph F. Ruh, Jr., Esq.
Public Chairperson

James G. Parker
Public Arbitrator

Vincent Micciche, Jr.
Industry Arbitrator

I, Joseph F. Ruh, Jr., Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Joseph F. Ruh, Jr., Esq.

Date of Decision: March 27, 1997

ARBITRATOR'S SIGNATURE

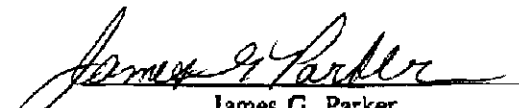
Joseph F. Ruh, Jr., Esq.
Public Chairperson



James G. Parker
Public Arbitrator

Vincent Micciche, Jr.
Industry Arbitrator

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



James G. Parker

Date of Decision: March 27, 1997