

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William F. Glase

95-01829

Name of Respondents

Scott Weinfeld
National Financial Services Corporation
Philip J. Eitman

REPRESENTATION

Claimant William F. Glase ("Claimant") was represented by Louis J. Ruch, Esq., Ruch & Gontram, Philadelphia, PA.

Respondent National Financial Services Corporation ("NFSC") was represented by Matthew Farley, Esq., Shanley & Fisher, New York, NY.

Respondent Scott Weinfeld ("Weinfeld") was represented by David B. Bernfeld, Esq., Hoffinger Friedland Dobrish Bernfeld & Stern, New York, NY.

Respondent Philip J. Eitman ("Eitman") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed April 13, 1995.

The Amended Statement of Claim was filed February 22, 1996.

Claimant's Uniform Submission Agreement was signed March 13, 1995.

Claimant's Amended Uniform Submission Agreement was signed January 19, 1996.

NFSC's Answer to the Amended Statement of Claim was filed March 29, 1996.

NFSC's Uniform Submission Agreement was signed March 27, 1996.

Weinfeld's Answer to the Amended Statement of Claim was filed June 19, 1996.

Weinfeld did not execute an agreement to arbitrate.

Eitman's Answer to the Amended Statement of Claim was filed June 17, 1996.

Eitman did not execute an agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: June 25, 1996/two sessions

Hearing Location: Vincent Varallo Associates
Philadelphia, PA

CASE SUMMARY

Claimant alleged in the Amended Statement of Claim, among other things, that Eitman supervised Weinfeld in the management of Claimant's account at High Yield Management Securities, Inc. ("HYM"). Claimant alleged that NFSC carried claimant's account for HYM and acted as agent on the transactions involved in the claims relevant to this arbitration. Claimant alleged that Eitman, Weinfeld and NFSC (collectively "Respondents") were informed that Claimant's investment strategy was safety of principal investment and that Claimant wanted spendable current income preferably in monthly interest payments. Claimant alleged that in June 1993 Weinfeld induced Claimant to purchase a \$100,000.00 Federal National Mortgage Association CMO for \$94,500.00. Claimant alleged that Respondents assured Claimant that this investment could be made with complete safety because the CMO were government backed mortgages. Claimant alleged that when Claimant questioned why the investment proceeds were not coming into his account as promised, Weinfeld talked about a "slow down" in mortgage financing but reassured Claimant not to worry. Claimant alleged that Weinfeld persuaded Claimant to purchase another CMO with a face value of \$105,000.00 for \$93,750.00. Claimant alleged that Respondents did not advise Claimant of the risks that there could be a significant drop in the short term value of the securities based on rising interest rates. Claimant alleged that Eitman failed to properly supervise Eitman and NFSC, as a principal in the trade, misled Claimant by approving a misleading confirmation form for use by Respondents. Claimant alleged that Respondents reassured Claimant that Claimant's principal was secure and would be fully repaid over a very short period. Claimant alleged that the actions of Respondents resulted in damages to Claimant.

NFSC denied any actions which resulted in damages to Claimant. NFSC maintained that NFSC merely acted as the clearing firm for HYM's business. NFSC maintained that no employee or individual at NFSC misled Claimant or failed to make any required disclosures to Claimant. NFSC maintained that HYM is a wholly separate and unaffiliated legal entity from NFSC. NFSC maintained that information about Claimant's accounts were put into NFSC's computer records by HYM personnel and NFSC had no knowledge of Claimant's allegations nor did NFSC play any role in the transactions in question. Therefore, NFSC had no control over Weinfeld or Eitman and thus no contractual or fiduciary duty to Claimant which was violated by any action or non-action of NFSC. NFSC also raised the affirmative defenses of failure to present a basis for recovery, delay in bringing complaint, waiver, ratification, estoppel and failure to fill in confirmation.

Weinfeld denied all allegations of improper behavior in the management of Claimant's account. Weinfeld maintained that Claimant's account, including the two CMO purchases relevant to this arbitration, were successful and increasing in value. Weinfeld maintained that Claimant was never subjected to inducement to authorize any transactions. Weinfeld acknowledged that Claimant was informed that the return of principal on the CMOs was essentially safe but Weinfeld did not inform Claimant that the CMOs "involved government backed mortgages". Weinfeld maintained that Claimant was informed that the timing of the return of principal was a function of interest rates which impacts the rate of refinancing. Weinfeld maintained that Claimant understood the affect of interest rates on the CMO mortgage pools and the length of time it would take to receive full payment on the CMOs. Weinfeld maintained that

Claimant's actions in purchasing the second CMO effectively demonstrates Claimant's knowledge that the repayment would vary based on interest rates and refinancing. Weinfeld maintained that as Claimant purchased each CMO on margin, Claimant's actual cash outlay was approximately \$25,000.00 for each CMO and not the full purchase price. In addition, Weinfeld maintained that while Claimant alleged that Claimant required current income from the investment, Claimant, in fact, left all dividends and interest in the accounts and made no withdrawals from the account during the time at issue. Weinfeld maintained that overall, Claimant's account appreciated in value during the period of time that Weinfeld managed it.

Eitman denied all allegations of wrong-doing in the management of Claimant's account. Eitman maintained that as President, Eitman had no contact with Claimant nor was Eitman directly responsible for supervisory duties relating to Claimant's account. Eitman maintained that he did not know Claimant's investment objectives nor did Eitman make investment recommendations. Eitman maintained that the transaction was suitable and proper. Eitman maintained that at all times he acted in good faith.

RELIEF REQUESTED

Claimant requested damages in the amount of \$117,740.91.

NFSC requested that the claims alleged in the Amended Statement of Claim against NFSC be dismissed in their entirety, and that no costs for this arbitration be assessed to NFSC.

Weinfeld requested that claims asserted in the Statement of Claim and Amended Statement of Claim be dismissed.

Eitman requested that all claims asserted against Eitman 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.

Respondents Weinfeld and Eitman did not file properly executed submission to arbitration with the NASD but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code"). Therefore the panel determined that Respondents Weinfeld and Eitman are bound by the determinations and rulings of the panel.

The panel considered Claimant's request that Respondents Eitman's and Weinfeld's Answers be denied as untimely and that Eitman and Weinfeld be barred from presenting any defense and denied the request.

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. That the Statement of Claim be dismissed in its entirety.
2. That each party shall bear its own costs and expenses.

3. That any relief any specifically addressed herein is denied.

FORUM FEES

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

2 Sessions x \$750.00 = \$1,500.00

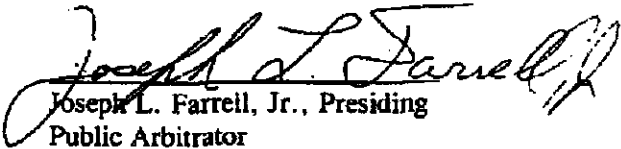
Forum Fees are assessed against Claimant. Claimant shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD, leaving a net assessment due of \$750.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

7/13/96


Joseph L. Farrell, Jr., Presiding
Public Arbitrator

Howard A. Finkelman
Public Arbitrator

Vernon C. Walker
Industry Arbitrator

Date Decision Served by NASD: July 23, 1996

3. That any relief any specifically addressed herein is denied.

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