

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimants

Catherine Lin-Hendel & Rudi Hendel

NASD Case No.  
95-03279

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Securities Dealers Inc.

Name of Respondents

\*Halpert & Co.  
Robert Browne

1996

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**REPRESENTATION**

Rudi Hendel appeared for claimants Catherine Lin-Hendel ("Lin-Hendel") and Rudi Hendel (together referred to as "claimants").

Camille Kenny, Esq. of the firm of Fleming Roth and Fettweis, Newark, New Jersey appeared for respondents Halpert and Company ("Halpert") and Robert Browne ("Browne").

**CASE INFORMATION**

Statement of Claim filed:	July 10, 1995
Claimants' Submission Agreement signed on:	June 30, 1995
Statement of Answer filed by Respondents, Halpert and Browne on:	August 15, 1996
Respondent, Halpert's, Submission Agreement signed on:	July 18, 1995
Respondent, Browne's, Submission Agreement signed on:	August 14, 1995

**HEARING INFORMATION**

Pre-Hearing Conference:	July 31, 1996	1 Session
Hearing Dates/Sessions:	June 10, 1996	2 Sessions
	August 2, 1996	2 Sessions
	October 2, 1996	2 Sessions
	October 3, 1996	2 Sessions
	October 4, 1996	1 Session

The hearings were held at the offices of the NASD in New York City, New York.

EASEM M A R Y

Claimants alleged that on or about February 2, 1993 respondent Browne, Assistant Vice President at Halpert, met with them at their home and advised Lin-Hendel to invest in promissory notes ("Notes") that were being offered by Towers Financial Corporation ("Towers"). Claimants alleged that Browne advised Lin-Hendel that investment in the Notes was a suitable investment option for her based upon her financial condition and her investment objectives. Claimants alleged that Browne advised Lin-Hendel that Halpert had conducted due diligence in investigating Towers and maintained that Browne represented that many companies, including Halpert itself, had invested in the Notes. Claimants alleged that Browne represented that investing in the Notes did not carry any unusual risks.

Claimants further alleged that, in reliance upon Browne's advice, Lin-Hendel instructed Browne to purchase \$25,000.00 worth of the Notes. Claimants alleged that on or about February 3, 1993, Browne obtained information from Lin-Hendel in order to complete Towers' Confidential Questionnaire. Claimants also alleged that Browne failed to inform Lin-Hendel that the questionnaire was to be used to insure that the purchaser of the Notes was "accredited" under Regulation D of the Securities Act of 1933. Claimants maintained that Browne negligently and fraudulently procured Lin-Hendel's signature on the questionnaire without providing a full and adequate explanation of the document's significance. Claimants also alleged that Browne failed to have the questionnaire properly notarized at the time Lin-Hendel signed it.

Claimants alleged that Lin-Hendel was never provided with Towers' Offering Document until after she had given Browne the \$25,000.00. Claimants also stated Lin-Hendel was never given the Towers Subscription Agreement and was thus unaware of most of the material facts regarding investing in the Notes until after she had made her purchase. Claimants alleged that Browne advised Lin-Hendel that her investment in the Notes would not become effective or binding until March 1, 1993. Claimants alleged that on or about February 8, 1993, Lin-Hendel learned that the Securities and Exchange commission ("SEC") was initiating a criminal investigation of Towers. Claimants alleged that Lin-Hendel telephoned Browne on or about February 8 or February 9, 1993 to cancel her investment in the Notes and claimed that she directed Browne to return the \$25,000.00 she had given him. Claimants alleged that Lin-Hendel advised Browne that once her \$25,000.00 was returned to her she would purchase \$25,000.00 worth of stock in IBM. Claimants maintained that Browne subsequently advised Lin-Hendel that she would need to send him an additional \$3,000.00 in order to obtain the IBM stock she wanted.

Claimants alleged that on or about March 4, 1994, Browne advised Lin-Hendel for the first time that Halpert had been unable to obtain the \$25,000.00 refund from Towers and that he had, therefore, been unable to purchase the IBM stock she had ordered. Claimants alleged that on or about March 7, 1993, Lin-Hendel received a letter from Towers stating that her purchase of the Notes had been effective as of February 8, 1993. Claimants alleged that they have, since March 1993, unsuccessfully attempted to obtain a refund from Halpert of Lin-Hendel's \$25,000.00 investment in the Notes as well as the \$3,000 she had provided to purchase the IBM stock.

Claimants alleged that Browne and Halpert knew or should have known that Towers was in financial difficulty, that an investment in the Notes was extremely risky and that Lin-Hendel did not meet certain income and asset requirements to qualify as an accredited purchaser pursuant to Regulation D. Claimants further alleged that Browne and Halpert breached their fiduciary duty to claimants by failing to disclose to them that they were realizing benefits by way of commissions through claimants' purchase of the Notes

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Claimants alleged that Halpert was liable for Browne's fraud, negligence and breach of fiduciary duty since Browne was acting within the scope of his employment as Halpert's Assistant Vice President.

Respondents denied each allegation made by claimants. Respondents maintained that Lin-Hendel called Halpert specifically seeking to buy \$50,000.00 of the Notes. Respondents maintain that Lin-Hendel was repeatedly asked if she was qualified in accordance with the requirements of Regulation D. Respondents asserted that Lin-Hendel represented both orally and in writing that she did meet the requirements of Regulation D. Respondents also maintained that Browne reviewed the questionnaire page by page with Lin-Hendel and specifically explained the criteria for qualification as an accredited investor pursuant to Regulation D. Respondents also asserted that Browne brought the Confidential Private Offering Document containing both the subscription agreement and the investor questionnaire to their first meeting. Thus, Respondents alleged that they reasonably believed that Lin-Hendel was an accredited investor.

Respondents maintained that Browne initially suggested that Lin-Hendel invest only \$25,000.00 in the Notes and proposed that she invest \$50,000.00 in municipal leases and \$225,000 in corporate and municipal bonds. Respondents alleged that Lin-Hendel decided to purchase \$25,000 of the Notes and bought approximately \$47,000 in municipal leases. Respondents maintained that Lin-Hendel rejected Browne's proposal to purchase \$225,000.00 in bonds because it was too conservative an investment and the yields were too low. Respondents alleged that Browne explained the known risks investing in the Notes entailed and maintained that Browne further advised Lin-Hendel that the Notes were illiquid and inherently risky. Respondents maintained that Browne visited Lin-Hendel at her office on February 2, 1993 at which time claimant gave him the signed notarized subscription agreement and questionnaire. Respondents stated that the trade was thereafter processed on that same date.

Respondents asserted that on or about February 10, 1993 Lin-Hendel advised Browne that she had decided to purchase approximately 500 shares of IBM stock. Respondents alleged that Lin-Hendel failed to advise him that she expected to use the \$25,000.00 she hoped have refunded by Towers. Respondents alleged that it was not until Browne advised Lin-Hendel that the IBM order had been executed that she revealed that she expected respondents to use the \$25,000 she had paid for the Notes. Respondents asserted that written and verbal notice had been given to Towers to cancel the purchase of the Notes by that time but Browne had previously specifically warned Lin-Hendel that Towers had not yet responded.

Respondents asserted that, on the settlement date for the IBM stock, Browne advised that Towers had not yet refunded Lin-Hendel's money and that he needed funds from her to settle the IBM trade. Respondents alleged that Lin-Hendel remitted only a portion of the necessary funds causing all but 69 shares of the IBM transaction to be canceled.

Respondents maintained that Lin-Hendel nevertheless continued to trade thereafter through Halpert, primarily in securities she chose. Respondents alleged that several of these investments were aggressive to speculative in nature. Respondents maintained that Lin-Hendel conducted business with them until September 1994, more than eighteen months after the transaction of which Lin-Hendel complained occurred. Respondents asserted that they could not have known, in the exercise of due diligence at the time, that Towers was perpetrating a fraudulent scheme and further maintained that the scheme was so sophisticated and elaborate that it took the SEC three years of investigation to fully reveal it.

Respondents urged that NASD to decline to exercise its jurisdiction in this matter because Lin-Hendel was a member of the plaintiff class in a class action suit concerning matters claimant alleged in this claim.

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**RELIEF REQUESTED**

Claimants requested \$33,000.00 in actual and compensatory damages, \$25,000.00 for the loss of the original investment in the Notes and \$8,000.00 for the loss of the IBM stock; \$10,000.00 in attorneys' fees and costs and \$5,000.00 in punitive damages.

Respondents requested judgment dismissing the claim with prejudice and sought costs and disbursements associated with this action together with such other relief as deemed just and proper.

**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. All claims against Halpert and Company and Robert Browne are denied. Claimant failed to prove its prima facie case.
2. All parties are to bear their respective costs including attorneys' fees; and

**FORUM FEES**

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

9 sessions X \$400.00	=	\$3,600.00
1 prehearing conference X \$300.00	=	\$300.00
TOTAL	=	\$3,900.00

Claimants be and hereby are liable for the sum of \$2340.00 representing three-fifths of the forum fees assessed. Claimants have already paid \$400.00. Therefore, claimants owe \$1940.00 to the NASD.

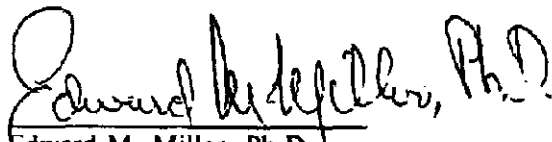
Respondent Halpert and Company be and hereby is liable for the sum of \$1560.00 representing two-fifths of the forum fees assessed. Therefore, respondent Halpert owes \$1560.00 to the NASD.

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

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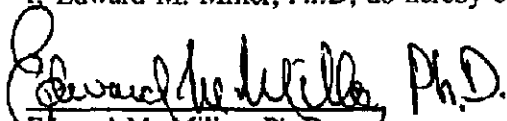
Concurring Arbitrators' Signatures

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Harry Weiss

  
\_\_\_\_\_  
Edward M. Miller, Ph.D.

\_\_\_\_\_  
Richard D. De Vita, Esq.

I, Edward M. Miller, Ph.D, do hereby certify that this is my decision in the above-referenced matter

  
\_\_\_\_\_  
Edward M. Miller, Ph.D.

NASD Date of Decision: November 13, 1996

Concurring Arbitrators' Signatures

Harry Weiss

Edward M. Miller, Ph.D



Richard D. De Vita, Esq.

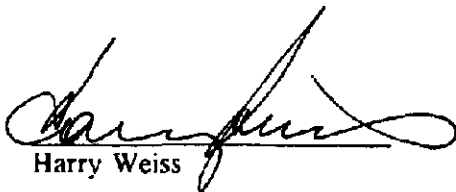
I, Richard D. De Vita, Esq., do hereby certify that this is my decision in the above-referenced matter.



Richard D. De Vita, Esq.

NASD Date of Decision: November 13, 1996

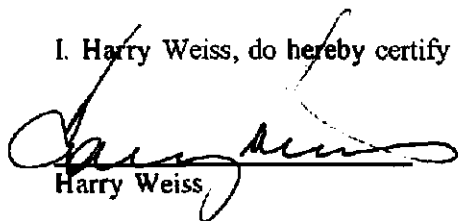
Concurring Arbitrators' Signatures

  
Harry Weiss

\_\_\_\_\_  
Edward M. Miller, Ph.D

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Richard D. De Vita, Esq.

I, Harry Weiss, do hereby certify that this is my decision in the above-referenced matter.

  
Harry Weiss

NASD Date of Decision: November 13, 1996