

**OFFICE OF DISPUTE RESOLUTION**

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In the Matter of the Arbitration Between

Name of Claimants

Robert S. & Maria Fede

95-05071

Name of Respondents

Sherman Ralston, Inc.  
Anthony Martinez

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**REPRESENTATION**

For Claimants Robert S. and Maria Fede ("Fede" or collectively, "Claimants") appeared Scott M. Zucker, Esq., located in Great Neck, New York.

For Respondents Sherman Ralston, Inc. ("SRI") and Anthony Martinez ("Martinez") appeared Caren S. Bruten, Esq., in-house council.

**CASE INFORMATION**

Statement of Claim filed: October 25, 1995

Claimant's Submission Agreement signed on: September 18, 1995

Statement of Answer filed by Respondent SRI on: December 15, 1995

Respondent, SRI's Submission Agreement signed on: December 14, 1995

Statement of Answer filed by Respondent Martinez on: December 15, 1995

Respondent, Martinez' Submission Agreement signed on: November 30, 1995

**HEARING INFORMATION**

Hearing Dates/Sessions:	April 29, 1997	-	Two Sessions
	April 30, 1997	-	Two Sessions
	June 24, 1997	-	Two Sessions

The hearings were held in the offices of NASD Regulation, Inc., located at 125 Broad St., New York City, New York.

**CASE SUMMARY**

Claimants alleged that they maintained a brokerage account with SRI, and that Respondent Martinez was a representative of SRI. Claimants further alleged that, in February 1995, they purchased 3500 shares

of Eagle Vision, Inc. ("EV"), and approximately 10 days later, they sold them with Martinez' assurance that they would receive confirmation of the sale. Claimants also alleged that soon afterwards, the price of the stock fell dramatically, but claimants contended that they were reassured by Martinez that the stocks had been sold before the drop. Claimants asserted that they later received a notice from SRI indicating that the sale had been cancelled. Claimants further asserted that they had relied on Martinez to execute and complete the transaction, but unknown to claimants, SRI cancelled the order which resulted in claimant's loss of \$14,000.00.

Claimants asserted that respondents' actions constituted fraud, a breach of respondents' fiduciary duty to claimants, a breach of the NASD Rules of Fair Practice and failure by SRI to supervise Martinez.

Respondent SRI maintained that Fede opened his account at SRI in November 1994, and was an active trader. SRI further maintained that, in February 1995, Fede and his brother-in-law, Larry Chiarenza ("Chiarenza"), approached Martinez to buy shares of EV, and though he cautioned them against buying a risky "penny stock", they insisted on buying. SRI also maintained that Robert Fede Sr., claimant's father, bought shares of EV several days later and convinced Martinez to buy shares for himself. SRI further maintained that Chiarenza and Fede Sr. promised to pay for the stock by the settlement day, but then postponed the date of payment. SRI also maintained that on the scheduled date of payment, Fede directed Martinez' to sell the EV stock, which he did immediately to the highest bidder, Hanover Sterling ("HS"). SRI claimed that moments later, the news came that NASD had stopped HS from making markets and the value of the EV shares dropped sharply. SRI maintained that it was clear that there might be difficulty in clearing the stocks if HS were out of business, and informed Fede of the situation. SRI further maintained that in an effort to protect claimants' interests it contacted HS's clearing house, Adler Coleman ("AC"), in an attempt to hold them to the sale, and also issued to claimants a confirmation of the trade. SRI contended that during the weekend, AC declared bankruptcy, and as feared, neither AC or HS honored the sale, forcing SRI to issue a cancellation of the sale confirmation to Fede. SRI also contended that Chiarenza and Fede Sr. refused to pay for the stocks, therefore SRI did not cancel a bona fide sale. Respondent alleged that claimants could still have sold on the open market, for about 25% of the original cost, but opted to sue instead.

#### **OTHER ISSUES CONSIDERED AND 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 NASD Regulation, Inc.

#### **RELIEF REQUESTED**

Claimants requested \$14,000.00 plus all costs and such other relief as the Panel deems just.

Respondents requested that the claim be dismissed in its entirety and that respondents be granted such other relief as the panel deems appropriate.

**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. The Statement of Claim is dismissed in its entirety.
2. All other requests for relief are denied.

**FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the panel has determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee and have assessed the following forum fees:

6 sessions x \$400 = \$2,400 minus claimants' hearing session deposit (-\$400) = \$2000 outstanding.

Claimants be and hereby are liable and shall pay the sum of \$2400.00 representing 100% of the total forum fees assessed. Claimant has previously deposited the sum of \$400.00 with NASD Regulation, Inc. and therefore owes the sum of \$2000.00.

Respondent SRI be and hereby is liable and shall pay the sum of \$200.00 as the Member Surcharge. Respondent has previously deposited the sum of \$100.00 with NASD Regulation, Inc. and therefore owes \$100.00.

Fees are payable to the NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Joan M. Traub

Joan M. Traub, Esq.

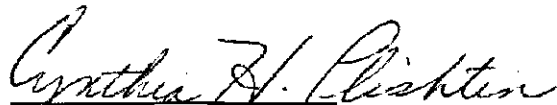
I, Joan M. Traub, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, That I am the Individual described herein, and who have executed this instrument which is my award.

Joan M. Traub

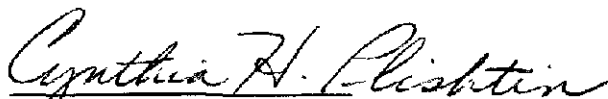
Joan M. Traub, Esq.

Date of decision: August 8, 1997

Concurring Arbitrators' Signatures

  
Cynthia H. Plishtin

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

  
Cynthia H. Plishtin

Date of decision: August 8, 1997