

Final Order
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Mitchell Spaiser, (Claimant) vs. Halpert & Company, Inc., Alan P. Halpert, Patrick J. Tiedemann, and Rick Schneiderman, (Respondents)

Case Number: 95-05991

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Mitchell Spaiser, hereinafter referred to as "Claimant": Jules L. Federman, Securities Arbitration Consultant, Atascadero, CA. Previously represented by: Nancy K. Undem, Esq., Attorney at Law, Montecito, CA; Carl A. Grubb, Esq., Law Offices of Carl A. Grubb, San Diego, CA; and J. Leo Federman, President, Investors Rights Association Inc., Santa Barbara, CA, respectively.

Respondent, Halpert & Company, Inc. ("H&C"): Camille M. Kenny, Esq., Fleming, Roth & Fettweis, Newark, NJ.

Respondent, Alan P. Halpert ("Halpert"): Linda B. Katz, Esq., Sills Cummis Zuckerman Radin Tischman Epstein & Gross, P.A., Newark, NJ.

Respondent, Patrick J. Tiedemann ("Tiedemann"): Brian H. Reis, Esq., Goldstein, Goldstein & Reis, LLP, New York, NY.

Respondent, Rick Schneiderman ("Schneiderman"), appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 1995.

First Amended Statement of Claim filed on or about: March 31, 1997.

Claimant signed the Uniform Submission Agreement: November 22, 1995.

Statement of Answer and Motion to Dismiss filed by H&C on or about: March 28, 1996.

H&C signed the Uniform Submission Agreement: April 30, 1996.

Statement of Answer filed by Halpert on or about: April 25, 1997.

Halpert did not sign a Uniform Submission Agreement.

Tiedemann did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by Schneiderman on or about: May 30, 1997.
Schneiderman did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: fraud and deceit; breach of fiduciary duty; negligence; breach of contract; and violations of the NASD Rules of Fair Practice, the rules of the New York Stock Exchange, and/or the rules of the American Stock Exchange. Claimant's claim involved Towers Financial notes.

Unless specifically admitted in his Answer, Halpert denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a cause of action against Halpert; Claimant's claims against Halpert are barred by the applicable statutes of limitations or repose; Halpert did not make any representations to Claimant regarding the investments at issue; the investments at issue were consistent with Claimant's stated investment objectives and not unsuitable for him to purchase; Claimant expressly ordered, approved, authorized, ratified, and participated in the acts and transactions complained of in the Amended Statement of Claim; Claimant had full, complete, and contemporaneous knowledge of all acts complained of in the Amended Statement of Claim and, accordingly, is precluded from recovering herein under the doctrines of waiver and estoppel; Claimant received a prospectus which fully informed him of all relevant information concerning the transactions of which he now complains; Claimant was a sophisticated investor and could readily evaluate the financial products at issue to determine, before buying them, whether they were consistent with his investment objectives; Claimant had full knowledge of, and assumed, the risks associated with the investments at issue before purchasing them; any decline in the value of Claimant's investments were caused by persons, conditions, or events beyond the control of Halpert; all transactions in Claimant's account were effectuated with prior consent and at Claimant's request; Claimant's alleged losses were caused by his own conduct and/or negligence; Claimant executed investor questionnaires and confirmed his suitability for the transactions complained of; Claimant failed to exercise reasonable care to mitigate his damages; Claimant's claims are barred by the doctrine of laches; Claimant's claims are barred as a result of his own negligence; Claimant has failed to adequately describe any alleged misrepresentations; Claimant has failed to allege, and cannot establish, justifiable reliance on any alleged misrepresentation made; Claimant's claims are barred by the "bespeaks caution" doctrine; Claimant's alleged damages, if any, should be reduced by any and all distributions or other payments he received concerning the subject investments; and there is no basis upon which punitive damages could be awarded to Claimant.

RELIEF REQUESTED

Claimant requested:

- a. Rescission of some or all of the investment interests, as may be applicable;
- b. An Award of compensatory damages in the approximate amount of \$25,000.00;
- c. Pre-award and post-award interest from the date of each investment at issue, according to proof at the arbitration hearing;
- d. Costs of arbitration, including but not limited to, reasonable attorneys' fees, consulting fees, expert witness fees, if applicable and as allowed, and any other costs deemed reasonable and just;
- e. Punitive and exemplary damages in a sum sufficient to properly punish and make an example of Respondents; and
- f. Such other and further relief as the Panel deems just and equitable.

Halpert requested dismissal of all claims against him.

OTHER ISSUES CONSIDERED AND DECIDED

On March 14, 1997, H&C filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. Accordingly, all claims against H&C were stayed.

On June 27, 1997, NASD Dispute Resolution, Inc. received a letter from Claimant advising that Schneiderman was being removed as a Respondent in this matter.

By letter dated August 20, 1997, Claimant advised NASD Dispute Resolution, Inc. that he was dismissing all claims against Respondent Tiedemann, with prejudice.

On November 13, 1997, the Superior Court of California issued a permanent injunction enjoining Claimant's representative, Jules Federman, from engaging in certain activities with respect to the representation of investors in securities disputes. In accordance with said injunction, counsel for Respondent Halpert drafted a Certification for Claimant's signature which acknowledged that Claimant had reviewed and understood the injunction, but nevertheless desired to have Jules Federman represent him in this arbitration. The Panel directed Claimant to either sign the Certification prepared by Halpert's Counsel, or submit an alternative Certification, by June 1, 2001. Claimant failed to meet this deadline set by the Panel.

On August 28, 2001, the Panel issued an Order which provided that NASD Dispute Resolution, Inc. must receive Claimant's signed Certification concerning the California injunction, as prepared by Halpert's counsel, on or before 5:00 p.m. on September 28, 2001. The Panel further ordered that if Claimant failed to meet this deadline, the Panel would entertain a motion to dismiss the Statement of Claim on that ground alone.

On October 1, 2001, Halpert's counsel made a motion to dismiss based on Claimant's failure to comply with the Panel's August 28, 2001 Order. Jules Federman submitted a letter dated October 18, 2001 in opposition to said motion, stating that although he had sent the Certification to Claimant, Claimant had not received it. After due consideration, the Panel granted Halpert's motion to dismiss.

At the Panel's direction, NASD Dispute Resolution, Inc. sent Jules Federman a facsimile dated October 25, 2001 advising him of the Panel's decision, and stating that the Panel would entertain a motion for reconsideration if such a motion was received by October 30, 2001, along with the properly executed Certification. No such motion was made, nor did NASD Dispute Resolution, Inc. receive Claimant's executed Certification concerning the California injunction.

On November 27, 2001, Jules Federman submitted a Certification signed by Mitchell Spaiser and dated October 31, 2001. The Panel determined that its dismissal of this claim should not be altered.

Halpert, Tiedemann, and Schneiderman did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and are bound by the determination of the Panel on all issues submitted.

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.

DECISION

After considering the pleadings, and the Claimant's failure to comply with the Panel's multiple Orders, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety, without prejudice to any rights or remedies Claimant may have in any other forum.
2. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 100.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Halpert & Company, Inc. is a party.

Member surcharge = \$ 200.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300.00 = \$ 300.00

Pre-hearing conference: March 24, 1998 1 session

Three (3) Pre-hearing sessions with Panel x \$400.00 = \$1,200.00

Pre-hearing conferences: October 9, 1997 1 session

May 11, 2001 1 session

August 28, 2001 1 session

Total Forum Fees = \$1,500.00

The Panel has assessed all of the forum fees against Claimant.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 100.00

Forum Fees = \$1,500.00

Total Fees = \$1,600.00

Less payments = \$ 500.00

Balance Due NASD Dispute Resolution, Inc. = \$1,100.00

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2. H&C be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 200.00
Total Fees	= \$ 200.00
<u>Less payments</u>	= \$ 200.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00


All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

David N. Brainin, Esq.	-	Public Arbitrator, Presiding Chair
Herbert Siegel, Esq.	-	Public Arbitrator
Scott K. Shaw	-	Industry Arbitrator

Concurring Arbitrators' Signatures

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



David N. Brainin, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Herbert Siegel, Esq.
Public Arbitrator

Signature Date

Scott K. Shaw
Industry Arbitrator

Signature Date

December 27, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL


David N. Brainin, Esq.	-	Public Arbitrator, Presiding Chair
Herbert Siegel, Esq.	-	Public Arbitrator
Scott K. Shaw	-	Industry Arbitrator

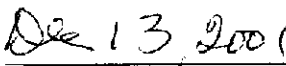
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Signature Date


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Public Arbitrator


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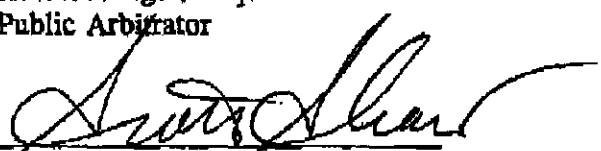
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Scott K. Shaw
Industry Arbitrator

Signature Date

December 27, 2001
Date of Service (For NASD office use only)