

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In-the Matter of the Arbitration Between

Name of Claimant

Nancy B. Sherertz

96-02817

Name of Respondent

Harvey F. Neustadt  
Investment Management & Research, Inc.  
Raymond James & Associates, Inc.

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REPRESENTATION

Claimant Nancy B. Sheretz ("Claimant") was represented by Gregory M. Miller, Esq., Shapiro and Olander, Baltimore, MD.

Respondent Investment Management & Research, Inc. ("IM&R") and Raymond James & Associates, Inc. ("RJA") was represented by Paul L. Matecki, Esq., Investment Management & Research, Inc., St. Petersburg, FL.

Respondent Harvey F. Neustadt ("Neustadt") did not appear.

CASE INFORMATION

The Statement of Claim was filed July 1, 1996.

Claimant's Uniform Submission Agreement was signed July 1, 1996.

The Joint Statement of Answer and Crossclaim of IM&R and RJA was filed September 18, 1996.

IM&R's Uniform Submission Agreement was signed September 18, 1996.

RJA's Uniform Submission Agreement was signed September 18, 1996.

Neustadt did not file an Answer to the Claim or the Crossclaim nor did he submit an agreement to arbitrate.

HEARING INFORMATION

Hearing Dates/Sessions:      May 5, 1997/two sessions  
   May 6, 1997/two sessions  
   May 7, 1997/two sessions  
   May 15, 1997/two sessions

Hearing Location:              Doubletree Hotel  
   Baltimore, MD

### CASE SUMMARY

Claimant alleged, among other things, that Neustadt, employed as a registered representative and branch manager by IM&R and RJA (collectively "Respondents"), induced her to authorize unsuitable transactions and engaged in unauthorized trading in Claimant's account. Claimant alleged that the misrepresentations and omissions of material facts resulted in a breach of contract, a breach of fiduciary duty and professional negligence. Claimant alleged that in November 1993 she opened an account and transferred approximately \$160,000.00 in cash and securities into the new account. Claimant alleged that Neustadt failed to ascertain adequate information on Claimant's background, financial position or investment objectives, nor did he provide her with any advice on establishing investment goals, selecting investments or reading her account statements. Claimant asserted that she was an unsophisticated investor and relied on Neustadt's representations to her detriment. Claimant alleged that she never gave Respondents discretionary control over any aspect of her account. Claimant alleged that in February 1994, Neustadt recommended she transfer her account balance into an "Elite" account which would permit Claimant to access short-term loans against her portfolio, but failed to explain the risks or tax consequences associated with the purchase of investments on margin. Claimant alleged that Neustadt purchased, on margin, \$150,000.00 worth of Eaton Vance Maryland Tax-Free Fund units for Claimant's account on February 28, 1994 and March 24, 1994, as well as an additional \$200,000.00 on April 29, 1994. Claimant alleged that this transaction was made without Claimant's authorization and that Neustadt failed to inform her that he had hypothecated her securities portfolio as collateral for the repayment of the loan. Claimant asserted that she could obtain little benefit from Eaton Vance securities, as income from otherwise tax-advantaged investments is not deductible when those investments are purchased with borrowed funds.

Claimant alleged that in early April 1994 she deposited \$1,800,000.00 in her Elite account, to hold it prior to investing approximately \$1,000,000.00 in a real estate venture scheduled for May 1994. Claimant alleged that Neustadt, without consulting Claimant or obtaining her authorization, began to purchase large positions in tax exempt unit trusts. Claimant alleged that Neustadt conducted these unsuitable transactions solely for the purpose of generating commissions for Respondents. Claimant alleged that between March 31, 1994 and the end of May 1994, Neustadt purchased almost \$1,700,000.00 in securities without her authorization. Claimant alleged that when Claimant requested that Neustadt transfer \$1,000,000.00 to Chemical Bank on May 13, 1994, the transfer caused a deficit in the cash account of more than \$1,000,000.00. Claimant alleged that Neustadt reduced the deficit balance by selling some of Claimant's securities, again without her authority or knowledge. Then, Claimant alleged, Neustadt again began buying similar securities, without Claimant's knowledge or authorization, raising her margin balance to almost \$1,000,000.00 by the end of November 1994.

Claimant alleged that in January 1995, IM&R and RJA terminated Neustadt's employment but did not inform Claimant, review transactions in Claimant's account or assign a new account representative to her account. Claimant alleged that her account was allowed to drift aimlessly for the next five months while losses and interest charges continued to mount. Claimant alleged that IM&R and RJA failed to adequately supervise Neustadt and that their actions, combined with Neustadt's, resulted in a breach of contract as well as a breach of fiduciary duty. Claimant alleged that numerous misrepresentations and omissions of material facts were made by Neustadt and which she reasonably relied upon. Claimant alleged that the actions of Respondents caused her to sustain damages.

The Answer and Crossclaim of IM&R and RJA denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Claimant met Neustadt in the fall of 1993 and that he was instrumental in assisting Claimant in obtaining alternate counsel resulting in the saving of tens of thousands of dollars in estate taxes. Respondents maintained that Claimant estimated her net worth at

\$800,000.00 with an annual income of \$50,000.00 when she opened her account at IM&R and RJA. Respondents maintained that Claimant indicated her primary investment objectives as long-term growth and tax-free income and shortly thereafter, transferred numerous small positions in municipal bonds and unit investment trusts to her account. Respondents further maintained that Claimant was fully aware in January 1994 that she would inherit several million dollars and, in fact, in April 1994 deposited almost \$2,000,000.00 in her account with Respondents. Respondents maintained that the purchases of securities, in particular the Eaton Vance Maryland Tax-Free Fund, were made in anticipation of this inheritance. In the spring of 1994, with a net worth of approximately \$15 million dollars and an annual income of \$100,000.00, Claimant's primary objective became tax-free income and long-term growth was her secondary objective. Furthermore, Respondents maintained that Claimant represented that she had in excess of ten years experience in mutual fund stocks and bonds and was clearly not an unsophisticated investor. Respondents maintained that Claimant was provided voluminous documentation at the time of opening her account clearly delineating her rights and responsibilities including the operation of a margin account and risks attendant to that. In addition, Respondents maintained that Claimant received confirmations and monthly account statements which detailed each and every transaction in her account.

Respondents maintained that, contrary to Claimant's assertions, Neustadt informed Claimant that her account was illiquid when she tried to withdraw \$1 million and the only way to raise the funds would be to sell securities at losses or borrow against her account. Respondents maintained that Claimant decided to borrow against her account and that the transactions in question resulted in a gain to Claimant and not a loss as she contends. In addition, Respondents maintained that Claimant was informed on January 30, 1995 that Neustadt was no longer affiliated with IM&R and she was instructed to contact IM&R to advise them what she wanted to do in her account. Respondents maintained that Claimant failed to contact Respondents and allowed her account to languish. Respondents raised the affirmative defenses of laches and/or statute of limitations, failure to state a claim for which relief can be granted, contributory negligence, assumption of risk, ratification, estoppel and waiver, and a failure to mitigate.

In the Crossclaim against Neustadt, IM&R and RJA alleged that the Independent Sales Associate Agreement executed by Neustadt, he agreed to indemnify and hold harmless IM&R and its affiliates, including RJA, from any and all liabilities in connection with Neustadt's handling of his customers' accounts. Therefore, to the extent IM&R and/or RJA incur any liability and be ordered to pay damages in connection with this action, that Neustadt be ordered to indemnify IM&R or RJA.

Neustadt did not file an Answer to the Statement of Claim or the Crossclaim.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$300,000.00; pre-award interest; punitive damages of \$1,000,000.00; and the costs and expenses of this arbitration.

Respondents IM&R and RJA be dismissed and that all costs associated herewith be assessed to Claimant. In the event that IM&R or RJA are found to be liable to Claimant as a result of the actions of Neustadt, that an award be entered against Neustadt for that amount.

**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.

The panel determined that Respondent Neustadt had been properly served with the notice of hearing pursuant to Rule 10315 of the Code of Arbitration Procedure ("Code") and that the matter would proceed pursuant to Rule 10318 of the Code. In addition, the panel determined that although Respondent Neustadt did not file a properly executed submission to arbitrate but is required to submit to arbitration pursuant to Rule 10301 of the Code, Respondent Neustadt is bound by the rulings and orders of the panel.

**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 Respondent IM&R is liable to and shall pay to Claimant \$39,500.00.
2. That Respondent IM&R is liable to and shall reimburse Claimant for the \$1,000.00 hearing session deposit Claimant previously submitted to the NASD Regulation.
3. That Respondent Neustadt is liable to and shall pay to Claimant \$86,000.00.
4. That the claims against Respondent RJA are dismissed.
5. That the claim for punitive damages is denied.
6. That Respondent Neustadt shall indemnify Respondent IM&R for any and all damages paid to Claimant.
7. That each party shall bear its own costs and expenses.
8. That any and all relief not specifically addressed herein is denied.

**FORUM FEES**

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

8 sessions x \$1,000.00 = \$8,000.00

Forum Fees are assessed to Respondent IM&R. Respondent IM&R shall receive credit for the \$1,000.00 hearing session deposit reimbursed to Claimant and for the \$1,000.00 hearing session deposit submitted with the Crossclaim, leaving Respondent IM&R a net assessment due of \$6,000.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

5/22/97,

Sandra Lee Dolan  
Sandra Lee Dolan, Presiding  
Public Arbitrator

Marshall Passman  
Marshall Passman  
Public Arbitrator

Gordon F. Linke  
Gordon F. Linke  
Industry Arbitrator

Date Decision Served by NASD Regulation: May 30, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

5/21/97

Sandra Lee Dolan, Presiding  
Public Arbitrator

*Marshall Passman*

Marshall Passman  
Public Arbitrator

Gordon F. Linke  
Industry Arbitrator

Date Decision Served by NASD Regulation: May 30, 1997

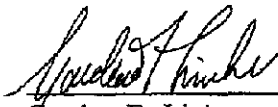
DATE

CONCURRING ARBITRATORS' SIGNATURES

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Sandra Lee Dolan, Presiding  
Public Arbitrator

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Marshall Passman  
Public Arbitrator

5/20/97

  
Gordon F. Linke  
Industry Arbitrator

Date Decision Served by NASD Regulation: May 30, 1997