

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Joan & Robert Fredericks

vs.

Case No.
96-03379

Name of Respondents

Richard G. Gagliardi
Lynn Gagliardi
American Asset Management Corporation
Addison Financial Services, Inc.
G.K. Scott & Co., Inc.
Donovan Peterkin
Russell Frayko
I.A. Rabinowitz & Co.
L.C. Wegard & Co., Inc.

REPRESENTATION

For Claimants Joan and Robert Fredericks ("Claimants") appeared George L. Mahr, Esq., a sole practitioner with offices located in Madison, New Jersey.

For Respondents Richard G. Gagliardi ("R. Gagliardi") and Lynn Gagliardi ("L. Gagliardi") and American Asset Management Corporation ("American Asset") appeared David S. Richan, Esq. of the law offices Tenzer Greenblatt LLP, located in New York, New York.

For Respondents Addison Financial Services, Inc. ("Addison") and Donovan Peterkin ("Peterkin") appeared Burton W. Wiand, Esq., of the law offices Fowler, White, Gillen, Boggs, Villareal and Banker, P.A. located in Clearwater, Florida. At the commencement of the hearing, Burton W. Wiand, Esq. appeared via telephone and notified the arbitrators that Claimants settled all claims with Addison and Peterkin.

Respondent G.K. Scott & Co., Inc. ("G.K. Scott") did not enter an appearance in this matter.

Respondent Russell Frayko ("Frayko") did not enter an appearance in this matter.

For Respondent I.A. Rabinowitz & Co. ("Rabinowitz") appeared Katherine C. Ash, Esq. of the law offices Parkin, Chapin, Flattau & Klimpl, LLP. located in New York, New York.

Respondent L.C. Wegard & Co., Inc. ("L.C. Wegard") did not enter an appearance in this matter.

CASE INFORMATION

Claimants' Statement of Claim was filed on August 6, 1996.
Claimants' Submission Agreement was signed on August 16, 1996.

A Joint Statement of Answer was filed by R. Gagliardi, L. Gagliardi, and American Asset on October 4, 1996.

R. Gagliardi did not file a properly executed Submission Agreement.
L. Gagliardi did not file a properly executed Submission Agreement.
American Asset did not file a properly executed Submission Agreement.

A Joint Statement of Answer was filed by Addison and Peterkin on October 21, 1996.
Addison did not file a properly executed Submission Agreement.
Peterkin did not file a properly executed Submission Agreement.

G.K. Scott did not file a Statement of Answer or a properly executed Submission Agreement.

Frayko did not file a Statement of Answer or a properly executed Submission Agreement.

Rabinowitz's Statement of Answer and Crossclaim was filed on September 27, 1996.
Rabinowitz's Submission Agreement was signed on September 26, 1996.

L.C. Wegard did not file a Statement of Answer or a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:	October 2, 1997	-	1 session
	July 20, 1998	-	1 session
	September 10, 1998	-	1 session
	January 4, 1999	-	2 sessions
Hearing Dates/Sessions:	February 4, 1999	-	2 sessions
	February 5, 1999	-	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants maintained that, in or about January 1989, Frayko asked them if he could review their securities portfolio and they consented. Claimants also maintained that, after they mentioned that they were interested in selling some property, Frayko suggested that his friend R. Gagliardi

might be able to help them in merchandising their property. Claimants contended that, when they met with R. Gagliardi to discuss their property, R. Gagliardi convinced them to become 'insider stockholders' in American Asset. Claimants alleged that they were both retired, on a fixed income and were unsophisticated investors who believed R. Gagliardi and Frayko's representations that their investment would be a short term loan and that it was a 'sure thing.' Claimants contended that, in 1991, they were given a prospectus and learned that they could not sell any stock for two years after the filing of the initial public offering.

Claimants contended that, in 1993, their accounts were transferred from Wegard to Addison and L. Gagliardi was listed as their account executive. Claimants maintained that, in or about January 1994, Peterkin contacted them and advised them that he represented Addison and was contacting clients of American Asset for the purpose of informing them of American Asset's precarious financial position. Claimants also contended that Peterkin advised them to sell their shares in American Asset before the company went out of business and save what they could of their investment. In addition, Claimants contended that they sold their shares for \$41,000.00 and, after Peterkin prevailed upon them, had Peterkin invest the proceeds in some solid stocks. Claimants also maintained that they advised Peterkin that their investment objectives were income, safety of principal, growth, trading profits and, speculation. Claimants alleged that, from February 17, 1994 through December 1994, Peterkin engaged in a course of dealing in speculative securities, including options, without their authorization and that those purchases were unsuitable for them. Claimants maintained that, thereafter, Peterkin transferred their accounts to Rabinowitz.

R. Gagliardi, L. Gagliardi and American Asset maintained that, pursuant to Rule 10304 of the NASD Code of Arbitration Procedure ("Code"), the claims against them were not eligible for submission to NASD arbitration.

Addison and Peterkin ("Addison Respondents") maintained that Claimants transferred their account to Addison and the transferred securities consisted of shares of American Asset. Addison Respondents denied any responsibility with respect to any transactions prior to the opening of an account with Addison. Addison Respondents contended that, in January 1994, after L. Gagliardi terminated her affiliation with Addison, Claimants' accounts were assigned to Peterkin. Addison Respondents also contended that, at that time, Peterkin reviewed the Claimants' accounts and, at Claimants' request, researched American Asset. Addison Respondents maintained that Peterkin, based upon the previous price history of the stock and trading activity, advised Claimants of his opinion that the outlook for American Asset was not good. In addition, Addison Respondents alleged that Claimants determined to sell their shares of American Asset and use the proceeds for other investment opportunities. Addison Respondents maintained that Claimants were provided with thorough and accurate information relating to their investments prior to Peterkin making them and that Claimants carefully considered those investments and made their own investment choices. Addison Respondents further contended that the investments were all consistent with Claimants' investment objectives and their investment strategy.

Rabinowitz contended that it could not be held liable for any losses which Claimants suffered prior to November 8, 1994, when their accounts were transferred from Addison. Rabinowitz also contended that it was not liable for losses which Claimants suffered in their accounts after their accounts were transferred to it. Rabinowitz alleged that, in November 1994, Claimants

purchased shares of Evro Corporation and that at no time had Claimants ever complained or stated that transactions were unauthorized or unsuitable. Rabinowitz maintained that, on or about December 8, 1994, Claimants purchased shares of The Emerging Mexico Fund, Inc. ("EMF") on margin and that a drop in value of EMF was unforeseen and due to the unexpected and sudden decision by the Mexican government to devalue the peso. Moreover, Rabinowitz maintained that Claimants never complained or claimed that the purchase of EMF was contrary to their instructions, unsuitable or unauthorized.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$300,000.00, plus punitive damages, attorneys' and expert fees.

Addison Respondents requested that Claimants' Statement of Claim be dismissed in total and that they be awarded all costs, expenses and attorneys' fees.

Rabinowitz requested that the Statement of Claim be dismissed as against it. In the alternative, Rabinowitz, should the panel find it liable, in whole or in part, for any of Claimants' alleged losses, sought indemnification and/or contribution from each of the other Respondents' in this action.

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 NASD Regulation, Inc.

Pursuant to Rule 10314 of the Code, the panel determined that service of the Statement of Claim was not properly effected upon G.K. Scott and L.C. Wegard. Therefore, all claims against G.K. Scott and L.C. Wegard were dismissed without prejudice.

In accordance with Rules 10301 and 10314 of the Code, the arbitrators determined that they did not have personal jurisdiction over American Asset because it was not a member of the NASD at the time this dispute arose and it did not voluntarily submit to the jurisdiction of the NASD. Therefore, all claims against American Asset were dismissed without prejudice.

At the commencement of the hearings in this matter, Claimant settled all claims with Peterkin, Addison and Rabinowitz. Therefore, Peterkin, Addison and Rabinowitz did not participate in the hearings in this matter.

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. In accordance with Rule 10304 of the Code, all claims against R. Gagliardi and L. Gagliardi are deemed ineligible for arbitration. Therefore, all claims against R. Gagliardi and L. Gagliardi are hereby denied in their entirety.
2. In accordance with Rule 10304 of the Code, all claims against Frayko are deemed ineligible for arbitration. Therefore, all claims against Frayko are hereby denied in their entirety.
3. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Addison has paid NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Rabinowitz has paid NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee submitted by Claimants and have assessed the following forum fees:

5 Pre-Hearing Conferences x \$750.00	=	\$3,750.00
4 Hearing Sessions x \$750.00	=	\$3,000.00

1. Claimants be and hereby are jointly and severally liable for forum fees in the sum of \$1,750.00. Claimants previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, shall pay the balance of \$1,000.00 to NASD Regulation, Inc.
2. R. Gagliardi and L. Gagliardi be and hereby are jointly and severally liable for and shall pay to NASD Regulation, Inc. forum fees in the amount of \$1,500.00.
3. Addison and Peterkin be and hereby are jointly and severally liable for and shall pay to NASD Regulation, Inc. forum fees in the amount of \$1,750.00.
4. Rabinowitz and Peterkin be and hereby are jointly and severally liable for and shall pay to NASD Regulation, Inc. forum fees in the amount of \$1,750.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

John Adam Kerns, Jr., Esq.	-	Public Chairperson
Carl W. Klemme	-	Public Arbitrator
David Levy, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



John Adam Kerns, Jr., Esq.

Date of decision: March 18, 1999

I, John Adam Kerns, Jr., Esq., 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.



John Adam Kerns, Jr., Esq.

ARBITRATION PANEL

John Adam Kerns, Jr., Esq.	-	Public Chairperson
Carl W. Klemme	-	Public Arbitrator
David Levy, Esq.	-	Industry Arbitrator


CONCURRING ARBITRATOR'S SIGNATURE



Carl W. Klemme

Date of decision: March 18, 1999 _____

I, Carl W. Klemme, 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.



Carl W. Klemme

ARBITRATION PANEL

John Adam Kerns, Jr., Esq.	-	Public Chairperson
Carl W. Klemme	-	Public Arbitrator
David Levy, Esq.	-	Industry Arbitrator

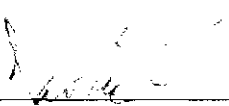
CONCURRING ARBITRATOR'S SIGNATURE



David Levy, Esq.

Date of decision: March 18, 1999

I, **David Levy, Esq.**, 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 Levy, Esq.