

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Peter Ripley
Gloria Denton
Patricia Neri
Estate of William R. Ripley

96-03873

Name of Respondents

Saperston Financial, Inc.
Arnold M. Nazarian
Michael Murphy

REPRESENTATION

For Claimants Peter Ripley ("Ripley"), Gloria Denton ("Denton"), Patricia Neri ("Neri"), and the Estate of William R. Ripley (the "Estate"), collectively referred to as "Claimants", appeared Craig H. Norman, Esq., of the firm Cooper, Erving, Savage, Nolan & Heller, located in Albany, New York.

For Respondents Saperston Financial, Inc. ("Saperston") and Arnold M. Nazarian ("Nazarian"), collectively referred to as "Respondents", appeared Patrick G. Finegan, Jr., a sole practitioner located in Washington, D.C.

For Respondent Michael Murphy ("Murphy") appeared James M. Reilly, Esq., of the firm Herzog Engstrom & Koplovitz, located in Albany, New York.

CASE INFORMATION

Statement of Claim was filed on May 17, 1996.

Amended Statement of Claim was filed on December 23, 1996.

Second Amended Statement of Claim was filed on June 30, 1997.

Reply to Counterclaim was filed on April 17, 1997.

Submission Agreements for Claimants Ripley, Denton, Neri and the Estate were on January 31, 1997.

Respondents filed a Joint Statement of Answer and Respondent Nazarian's Counterclaim on April 3, 1997.

Respondents filed a Joint Statement of Answer to the Amended Statement of Claim on July 9, 1997.

Respondents filed a Joint Statement of Answer to the Second Amended Statement of Claim on July 18, 1997.

Respondent Saperston's Submission Agreement was signed on April 8, 1997.

Respondent Nazarian's Submission Agreement was signed on April 4, 1997.

Statement of Answer to the Second Amended Statement of Claim was filed by Respondent Murphy on July 22, 1997.

Respondent Murphy's Submission Agreement was signed on July 23, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	September 30, 1997	One Session
Full Panel		
Hearing Dates/Sessions:	February 2, 1998	Two Sessions
	February 3, 1998	Two Sessions
	February 4, 1998	Two Sessions
	March 16, 1998	Two Sessions
	March 17, 1998	Two Sessions
	March 18, 1998	Two Sessions

The hearings were conducted at the Best Western in Albany, New York.

CASE SUMMARY

Pursuant to the Statement of Claim Nazarian and Saperston failed to supervise and control Murphy in the performance of his duties as an employee, agent and registered representative. Specifically, Claimants alleged that Nazarian and Saperston were aware of the conduct of Murphy and acquiesced and participated in said conduct, by allowing Claimants to be sold unsuitable and excessively risky securities. Claimants also alleged that Nazarian and Saperston: intentionally and/or recklessly failed to establish, maintain, and enforce adequate compliance procedures; failed to ensure supervision over the Clifton Park branch office; and ignored indications of misconduct by Murphy and other representatives in the office. Claimants contended that Nazarian and Saperston are liable for damages under the doctrine of respondeat superior.

Claimants alleged that Murphy contacted them and induced them to purchase Federal Home Loan Mortgage Corporation Multiclass Partner Certificates ("Freddie Mac Certificates") without advising them of the risks involved with such a purchase. In addition, Murphy knowingly made false representations that Claimants relied on to their detriment. Specifically, Claimants stated that Murphy contacted them to purchase senior subordinated notes of the Grand Union Company (the "Grand Union notes") stating to them that they were not "junk" bonds, but were of investment quality.

Claimants asserted that Murphy recklessly or negligently failed to properly investigate the securities and failed to apprise Claimants of the risks involved with the securities. Claimants entered into a contract pursuant to which Saperston, expressly and impliedly agreed to, and in fact, managed the securities accounts of Claimants. Claimant asserted that Saperston breached that contract and its duty of good faith and fair dealing, and that Nazarian breached that contract by failing to supervise Murphy. Claimants further asserted that the conduct of all Respondents violated the rules and regulations of the NYSE and the NASD. Claimants alleged that all Respondents breached their fiduciary duty. Claimants further alleged that the actions of all Respondents were meant to defraud Claimants and are in violation of SEC Rule 10(b)(5).

According to their Answer, Respondents Nazarian and Saperston maintained that they were not negligent in any way. Nazarian and Saperston maintained that they did not have an investment management contract with Claimants, and therefore, there was no breach of contract. Nazarian and Saperston contended that they neither defrauded, mislead, or otherwise failed to satisfy any duty to Claimants nor did they violate any NYSE or NASD rules and regulations. Nazarian and Saperston contended that their relationship with Claimants was a normal brokerage relationship therefore no fiduciary duty existed. Nazarian and Saperston denied that they violated SEC Rule 10(b)(5) under the SEC Act of 1934.

Murphy maintained that Claimants indicated that they had several years of experience investing in securities, and that the initial assets in the accounts were transferred from other brokerage accounts. Murphy further maintained that Claimants indicated that they were interested in speculative investments and growth. Murphy asserted that William Ripley, now deceased, made the investment decisions and that the other Claimants' accounts mirrored his own. Murphy further asserted that the risks were understood by William Ripley and that he chose to invest in the Grand Union notes and indicated this desire in writing to Murphy and Nazarian. Murphy contended that Claimants were not deceived into any of the investments and no rules or regulations were violated. Murphy further contended that there was no investment - advisor relationship, and therefore, there was no contract or breach thereof. Murphy asserted that the losses on the Grand Union notes were the result of market forces and the announcement of Grand Union that it would be unable to meet its debt obligations.

Nazarian, in his Counterclaim, alleged that he refused to refund Claimants their losses on the Grand Union notes, and therefore, they have brought this arbitration against him. Nazarian further alleged that he has been defamed by allegations of Claimants.

Claimants denied all allegations in the Counterclaim.

RELIEF REQUESTED

Claimants requested compensatory damages of \$241,944.31, punitive and exemplary damages of \$4,758,055.70, plus interest and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed in its entirety.

Nazarian, in the Counterclaim, requested \$250,000.00 in damages.

Claimants requested that the Counterclaim be dismissed with prejudice, and judgement in favor of Claimants for the relief requested in the Statement of Claim.

Murphy requested that the Statement of Claim be dismissed in its entirety.

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. The case against all Respondents is dismissed for failure to prove any cause of action against them.
2. The counterclaim of Nazarian is dismissed for failure of proof.
3. Claimant's Statement of Claim was frivolous and lacked merit. As such the panel has determined to assess all NASD fees, including forum fees, against Claimant. See section entitled forum fees.
4. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee deposited by Claimants, and the \$500.00 member surcharge deposited by Saperston, and have assessed the following Forum Fees:


1 Pre-hearing conference x \$1,000.00	=	\$ 1,000.00
12 Hearing sessions x \$1,000.00	=	<u>\$12,000.00</u>
Total Forum Fees	=	\$13,000.00

1. Claimants be and hereby are liable and shall pay NASD Regulation, Inc. the sum of \$13,000.00 representing the total forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc., and, therefore, Claimants are liable for the balance of \$12,000.00.

2. Claimants be and hereby are liable and shall pay to NASD Regulation, Inc. the sum of \$500.00, representing the filing fee for filing the Counterclaim of Nazarian. The \$500.00 filing fee has been included in Claimant's total filing fee.

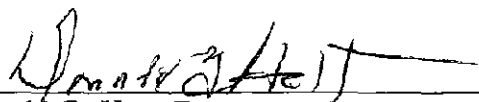
Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES


Donald G. Hatt, Esq.
Chairperson - Public Arbitrator

Date of decision: May 5, 1998

I, **Donald G. Hatt, 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.


Donald G. Hatt, Esq.

ARBITRATORS' SIGNATURES

John L. Barry, III
Industry Arbitrator

Date of decision: May 5, 1998

I, **John L. Barry, III**, 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 L. Barry, III