

**AWARD****NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant(s)**

J'eral R. Fontaine

Arbitration  
No. 96-03955

**Name of Respondent(s)**

Cohig & Associates, Inc.  
Edwin Raymond

**REPRESENTATION**

For Claimant: Jeffrey L. Gaffney, Esq., San Diego, California

For Respondents: Russell K. Bean, Esq., Cohig & Associates, Inc.,  
Englewood, Colorado

**CASE INFORMATION**

Statement of Claim filed: August 30, 1996

Claimant's Submission Agreement signed: April 2, 1996

Joint Statement of Answer filed by Respondents: October 29, 1996

Respondents' Submission Agreements signed as follows:

Cohig & Associates, Inc.: October 28, 1996

Edwin Raymond: November 4, 1996

**HEARING INFORMATION**

Pre-Hearing Conference Date(s)/Session(s):

July 31, 1997 (one session)

December 4, 1997 (one session)

Hearing Date(s)/Session(s): January 21, 1998 (one session)  
January 22, 1998 (two sessions)

Hearing Location: San Diego, California

**CASE SUMMARY**

Claimant alleged the following claims with respect to investments in various securities: 1) Violation of Sections 10(b) and 20 of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission, Fraud, Deceit, and Omission of Material Fact, and Suitability; 2) Intentional Misrepresentation and Negligent Misrepresentation; 3) Breach of Fiduciary Duty and Breach of the Implied Covenant of Good Faith and Fair Dealing; 4) Violation of NYSE 342, 401 and 405 Know Your Customer Rules and NASD Rules of Fair Practice, Article III Section 2 Recommendations to Customers and Section 40 Private Transactions; and 5) Professional Malpractice.

Respondents Cohig & Associates, Inc. (Cohig) and Edwin Raymond (Raymond) denied Claimant's allegations and alleged that Claimant's claims are barred by applicable statutes of limitation, and that Claimant's losses are the result of her own negligence, and that her losses are the result of market forces over which Respondents had no control. Respondents further alleged that Ms. Fontaine was an experienced investor who desired to place a portion of her assets at risk with the hope of appreciation; that she announced this stated intention to Mr. Raymond; that she specifically indicated that, of the \$200,000.00 she had received in a divorce settlement the bulk of it was invested in safe investments through Spellman, but that Spellman had approved her trading with a portion of her assets; and that her representations to Mr. Raymond and to Cohig in this regard allowed her to make the purchases reflected in her Cohig account. Respondents further alleged that the activity of Ms. Fontaine indicates that she understood the risks of investing in securities designed for growth with risk and speculation, and that, by segregating her assets, she had the ability to bear the risk of loss of her investments. Respondents further alleged that Ms. Fontaine accepted these risks after consultation with her investment adviser and alleged that the disputed investments were suitable for her investment needs and objectives. Respondents further alleged that Claimant was made fully aware of the risks of her investments, including being provided a copy of the Penny Stock Risk Disclosure document and a private placement memorandum and alleged that based on her suitability, Claimant's Claim should fail.

**RELIEF REQUESTED**

Claimant requested an award against Respondents, and each of them, and find them jointly and severally liable. Claimant asserted that the objective of this award is to make the Claimant whole; and further asserted that after attorney's fees and arbitration costs are deducted from the award, Claimant should be left with 100 percent of her out-of-pocket losses. Claimant also alleged that she is entitled to receive imputed interest on her

loss at the legal rate. Claimant further alleged that the appropriate make-whole amount for Claimant from Respondents is approximately \$23,553.00, as follows:

1. Out of pocket damages to be proven at the hearing in the approximate amount of \$23,563.00;
2. Pre-award and post-award interest of seven percent (7%) from the date of the original investment in an amount to be demonstrated at the hearing;
3. Costs of NASD filing fees in the amount of \$500.00;
4. Costs of arbitration session fees;
5. Reasonable attorney's fees in an amount to be demonstrated at the hearing; and
6. Punitive damages and exemplary damages as determined by the arbitrators.

Respondents requested that Claimant's claims be denied in their entirety.

#### OTHER ISSUES CONSIDERED AND DECIDED

On or about July 28, 1997, Claimant dismissed Hanifen Imhoff, Inc. from this matter and withdrew all claims against Hanifen Imhoff, Inc. with prejudice.

The parties have agreed that the Award in this matter may be executed in either 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. (NASDR).

The panel determined that forum fees shall be assessed in connection with the pre-hearing conferences held July 31, 1997 and December 4, 1997. The panel did not assess forum fees in connection with the hearing session held January 21, 1998.

#### 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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$10,000.00.
2. Claimant's claims for punitive and exemplary damages are denied.
3. The parties shall each bear their respective costs including attorney's fees.

**FORUM FEES**

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall retain the \$400.00 hearing session deposit previously deposited by the Claimant. Forum fees shall be split between the parties and are calculated as follows:


One pre-hearing session @ \$400.00/session	=	\$ 400.00
One pre-hearing session @ \$300.00/session	=	\$ 300.00
Two hearing sessions @ \$400.00/session	=	\$ 800.00
Total fees assessed	=	\$1,500.00
Claimant's share (50%)	=	\$ 750.00
Credit for hearing deposit	=	\$ 400.00
Balance due	=	\$ 350.00
Respondents' share, jointly and severally (50%)	=	\$ 750.00
Balance due	=	\$ 750.00

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
James D. Knotter, Esq.	Public Arbitrator
Merton A. Bobo, Esq.	Public Arbitrator
Richard M. Leigh	Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
James D. Knotter, Esq.

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Merton A. Bobo, Esq.

\_\_\_\_\_  
Richard M. Leigh

Date of Decision: \_\_\_\_\_

Date Served: 02/27/98

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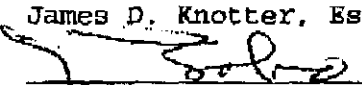
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James D. Knotter, Esq.	Public Arbitrator
Merton A. Bobo, Esq.	Public Arbitrator
Richard M. Leigh	Industry Arbitrator

**Concurring Arbitrators' Signatures**

James D. Knotter, Esq.

  
Merton A. Bobo, Esq.

Richard M. Leigh

Date of Decision: 1/22/98

Date Served: 02/27/98

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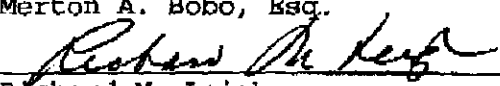
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Merton A. Bobo, Esq.  
Richard M. Leigh

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

**Concurring Arbitrators' Signatures**

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James D. Knotter, Esq.

\_\_\_\_\_  
Merton A. Bobo, Esq.

  
\_\_\_\_\_  
Richard M. Leigh

Date of Decision: \_\_\_\_\_

Date Served: 02/27/98