

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Steven Rubenstein, (Claimant) vs. Alan Halpert, (Respondent)

Case Number: 96-04104

Hearing Site: New York, NY

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**REPRESENTATION OF PARTIES**

Claimant, Steven Rubenstein: Brian J. Cooke, Esq., Arnstein & Lehr, West Palm Beach, FL.

Respondents, Halpert & Company, Inc., Alan Halpert, and Matthew Cohen: Ruthann Niosi, Esq., The Law Offices of Ruthann Niosi, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 11, 1996

Claimant signed the Uniform Submission Agreement: September 3, 1996

Answer to Counterclaim filed on or about: December 12, 1996

Statement of Answer and Counterclaim filed by Halpert & Company, Inc. and Alan Halpert ("Respondents") on or about: November 25, 1996

Alan Halpert and Halpert and Company, Inc. signed the Uniform Submission Agreement: September 27, 1996

Matthew Cohen did not file a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant alleged the following causes of action: breach of fiduciary duty; violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934. Claimant further alleged that Respondent, Halpert and Company, Inc., failed to adequately supervise the actions of Respondent Alan Halpert.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant is a sophisticated investor whose investment goals were, in part, speculative; he had a non-discretionary account and personally approved all transactions; he assumed the risks associated with the financial products involved; no misrepresentations were made by respondents; Claimant is barred by

the "bespeaks caution" doctrine; he is also barred by applicable statutes of limitation; all or some of the claims are barred by reason of laches; he participated in a class action relating to the financial products at issue and is, therefore, barred by sections 10106 and 10301(d) of the NASD Code of Arbitration Procedure ("Code"); and, he is prosecuting an action against the Respondents that touches upon matters in the arbitration, thus barring his claims according to section 10106 of the NASD Code.

In its Counterclaim, Respondents alleged that the Claimant made false representations and warranties and is liable under alternate theories of fraud, breach of contract and indemnification.

#### **RELIEF REQUESTED**

Claimant requested entry of an award against the Respondents of Compensatory damages in excess of \$850,000.00, together with loss of return on investment, attorneys' fees, the costs associated with this action, and all other and further relief as the Panel deems just.

Respondents requested an award dismissing the Claimant's claims. In the Counterclaim, Respondents requested an award for an unspecified amount of damages, plus reasonable attorneys' fees.

#### **OTHER ISSUES CONSIDERED AND 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.

By order of the United States Bankruptcy Court, this proceeding was stayed as to Respondent, Halpert & Company, Inc.

By letter dated September 30, 1996, Claimant voluntarily dismissed without prejudice all claims against Respondent Matthew Cohen. Therefore, Matthew Cohen did not participate in the hearing of this matter.

Counsel for Respondents, Halpert & Company, Inc. and Alan Halpert, requested postponement of two hearings scheduled for May 11 and 12, 1999. This request was granted and all fees associated with the postponement were waived.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as

follows:

1. All claims and counterclaims are hereby denied in their entirety.
2. All other requests are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 250.00
Counterclaim filing fee	= \$ 500.00

#### **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 event giving rise to the dispute. In this matter, Halpert & Company is a party. Due to its filing for bankruptcy protection, all member fees are waived as against Halpert & Company, Inc.

Member surcharge	= \$ 0.00
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#### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing dates January 13-14, 1999 by Claimants \$1,000 (waived)

Hearing dates May 11-12, 1999 by Respondents \$1,000 (waived)

#### **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:

Two (2) Pre-hearing sessions with a single arbitrator x \$300.00	= \$ 600.00
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Pre-hearing conferences:	July 9, 1999	2 sessions
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Five (5) Pre-hearing sessions with Panel x \$1,000.00	= \$ 5,000.00
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Pre-hearing conferences:	July 30, 1998	1 session
	September 11, 1998	1 session
	November 12, 1998	1 session
	January 13, 1999	1 session

	April 9, 1999	1 session	
Five (5) Hearing sessions x \$1,000.00			= \$ 5,000.00
Hearing Dates:	April 15, 1999	2 sessions	
	April 16, 1999	1 session	
	October 19, 1999	2 sessions	
Total Forum Fees			= \$10,600.00

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

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$10,600.00</u>
Total Fees	= \$10,850.00
<u>Less payments</u>	<u>= \$ 1,250.00</u>
Balance Due NASD Regulation, Inc.	= \$ 9,600.00
2. Respondent be and hereby is solely liable for:

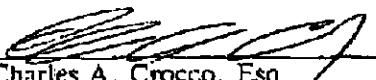
Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 0.00
Total Fees	= \$ 500.00
<u>Less payments</u>	<u>= \$ 1,600.00</u>
Refund Due to Respondent	= \$ 1,100.00

All balances are due and payable to NASD Regulation, Inc.

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**Concurring Arbitrators' Signature(s)**

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.

  
Charles A. Crocco, Esq.  
Public Arbitrator, Presiding Chair

December 10, 1999  
Signature Date

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Lorih Corena, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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C. Anthony Bell  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution  
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Concurring Arbitrators' Signature(s)

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

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Charles A. Crocco, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Lorih Corena, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

C. Anthony Bell  
C. Anthony Bell  
Industry Arbitrator

December 10, 1999  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)