

## NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimants

Patrick and Bridget Nee

96-04227

Name of Respondents

Halpert & Company, Inc.  
Ellen (Cesarski) Feldman

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**REPRESENTATION**

For Claimant Patrick and Bridget Nee, ("Claimants"), appeared John J. Blanchard, Esq., a sole practitioner located in Montvale, New Jersey.

For Respondent Halpert & Company, Inc., ("Halpert"), appeared Larry Lenski, Esq., of Ravin, Greenberg & Marks, LLP located in Roseland, New Jersey.

For Respondent Ellen (Cesarski) Feldman, ("Feldman"), appeared Matthew Baldini, Esq., of Cole, Schotz, Meisel, Forman & Leonard, P.A. located in Hackensack, New Jersey.

**CASE INFORMATION**

Statement of Claim was filed on September 24, 1996.

Claimants' Submission Agreement was signed on September 23, 1996.

Statement of Answer of Respondent Halpert was filed on November 12, 1996.

Respondent Halpert's Submission Agreement was signed on October 2, 1996.

Statement of Answer of Respondent Feldman and Amended Answer of Respondent Halpert was filed on January 16, 1997.

Respondent Feldman's Submission Agreement was signed on February 3, 1997.

**HEARING INFORMATION**

Hearing Date/Sessions:

May 21, 1997

2 Sessions

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

### **CASE SUMMARY**

Claimants alleged that they originally invested in a New York State H.F.A. General Housing Bond in the amount of \$50,000.00 with Respondent Halpert. Claimants maintained that, in approximately the end of August 1986, Respondent Feldman mailed them information on LCL Income Properties L.P.I. Claimants maintained that Respondent Feldman assured Claimants that they could not lose their money and further assured them a return of \$50,000 with an 8% interest accumulated during the period. Claimants further maintained that Respondent Feldman sold the bond, investing the proceeds in LCL Income properties L.P.I., without their knowledge or consent. Claimants contended that the investment was grossly misrepresented to them. Claimants alleged that they did not receive the "Private Offering Memorandum and Exhibits" until after the signing of the required documents and did not notice that it did not bear their name. Claimants contended that they were novices concerning the nature of investments, specifically "Limited Partnerships" and, furthermore, could not obtain help or information from Respondent Halper. Claimants further maintained this investment was unsuitable for them because of their financial situation.

Respondents moved to dismiss the proceeding pursuant to Rule 10304 of the NASD Code of Arbitration Procedure on the grounds that the claims asserted arose over ten years ago, and are therefore, not eligible for submission to arbitration. Respondents alleged that all contacts with Claimants took place over ten years prior to the filing of the Statement of Claim. Respondents further alleged that, in or around 1986, Respondent Halpert began offering for sale investments in a real estate limited partnership called LCL Income Properties, L.P.I. ("LCL"). Respondents maintained that Respondent Feldman contacted Claimants to advise them of a new opportunity to invest in a real estate limited partnership. Respondents further maintain that they supplied Claimants with documents describing LCL, including the Private Placement Memorandum, which clearly set forth the risks involved with such an investment. Respondents alleged that Claimants expressed an interest in making an investment with the potential for appreciation and growth, and that they decided to sell their housing bonds to purchase an interest in LCL. Moreover, Respondents further contended Claimants executed a letter dated September 12, 1986, which expressly granted Respondent Halpert permission to apply the proceeds of the sale of their housing bonds as partial payment of the purchase price of their investment in LCL. Respondents maintained that they fulfilled all fiduciary and other obligations imposed upon them concerning the transactions with claimants, including the execution of a Subscription Agreement on September 16, 1986.

### **RELIEF REQUESTED**

Claimants requested actual damages in the amount of \$75,000.00 plus interest.

Respondents requested that all claims be dismissed in their entirety and that they be awarded all costs incurred.

### **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.

The panel denied Respondents Motion to Dismiss pursuant to Rule 10304 of the NASD Code of Arbitration Procedure.

All proceedings against Respondent Halpert were stayed pursuant to a bankruptcy filing.

**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. Respondent Feldman be and hereby is liable and shall pay Claimants the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00).
2. Claimants shall not be entitled to any other relief as to Respondent Feldman.
3. All other requests for relief are hereby denied.

**FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously paid by Claimants and have assessed the following forum fees:

2 Hearing Sessions	x	\$400.00	=	\$800.00
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1. Claimant be and hereby is liable for the sum of \$400.00, representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$400.00 with NASD Regulation and, therefore, Claimants owe nothing in forum fees.
2. Respondent Feldman be and hereby is liable and shall pay for the sum of \$400.00 representing one-half of the total forum fees assessed.

Arbitrators' Signatures



Robert Pincus, Esq.  
Public Arbitrator - Chairman

I, Robert Pincus, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual herein, and who executed this instrument which is my award.



Robert Pincus, Esq.

Caryl D. Feldmann  
Public Arbitrator

I, Caryl D. Feldman, 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.

Caryl D. Feldman

Sheldon Lasher  
Industry Arbitrator

I, Sheldon Lasher, 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.

Seldon Lasher

Date of Decision: September 22, 1997

Arbitrators' Signatures

\_\_\_\_\_  
Robert Pincus, Esq.  
Public Arbitrator - Chairman

I, Robert Pincus, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Robert Pincus, Esq.

  
Caryl D. Feldmann  
Public Arbitrator

I, Caryl D. Feldman, 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.

  
Caryl D. Feldman

\_\_\_\_\_  
Sheldon Lasher  
Industry Arbitrator

I, Sheldon Lasher, 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.

\_\_\_\_\_  
Sheldon Lasher

Date of Decision: September 22, 1997

Arbitrators' Signatures

\_\_\_\_\_  
Robert Pincus, Esq.  
Public Arbitrator - Chairman


I, Robert Pincus, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual herein, and who executed this instrument which is my award.

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Robert Pincus, Esq.

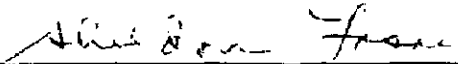
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Caryl D. Feldmann  
Public Arbitrator

I, Caryl D. Feldman, 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.

\_\_\_\_\_  
Caryl D. Feldman

  
\_\_\_\_\_  
Sheldon Lasher  
Industry Arbitrator

I, Sheldon Lasher, 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.

  
\_\_\_\_\_  
Sheldon Lasher

Date of Decision: September 22, 1997