

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Dorothea M. Hague

vs.

Case No.  
96-05219

Name of Respondents

Vincent Grucci and Matthew Leo

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**REPRESENTATION**

For Claimant Dorothea M. Hague ("Claimant"), Herbert M. Deutsch, Esq. from the law firm of Deutsch & Lipner located in Garden City, New York.

For Respondent Vincent Grucci ("Grucci"), James J. Carroll, P.C. located in Bellport, New York until on or about August 28, 1998.

For Respondent Matthew Leo ("Leo"), George P. Kersten, Esq. from the law firm of Kersten & McKinnon, S.C. located in Milwaukee, Wisconsin.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on November 21, 1996.  
Claimant's Submission Agreement was signed on April 11, 1996.

Respondent Grucci's Statement of Answer was filed on February 11, 1997.  
Grucci's Submission Agreement was signed on February 11, 1997.

Respondent Leo's Statement of Answer was filed on January 14, 1997.  
Leo's Submission Agreement was signed on February 13, 1997.

**HEARING INFORMATION**

Pre-Hearing Conferences:	May 27, 1997	-	1 session (Chair)
	June 24, 1997	-	1 session (Chair)
	July 7, 1997	-	1 session (Chair)
	July 31, 1997	-	1 session (Panel)
	October 8, 1997	-	1 session (Panel)

	April 1, 1998	-	1 session (Panel)
	May 27, 1998	-	1 session (Panel)
	August 28, 1998	-	1 session (Chair)
Hearing Dates/Sessions:	November 18, 1997	-	2 sessions
	September 1, 1998	-	2 sessions
	September 2, 1998	-	2 sessions
Post-Hearing Conference:	September 3, 1998	-	1 session (Panel)

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

### CASE SUMMARY

Claimant alleges that in May 1990, at age 67, she inherited \$240,000.00, consisting of municipal bonds and blue chip stocks. Claimant also alleges that at the recommendation of Grucci, her grand daughter's husband, and registered representative at Educators Financial Management ("Educators"), she sold the bonds and stocks and purchased limited partnerships.

Claimant further alleges that she told Grucci that her investment objective was conservative growth and income for a period of seven years. Claimant further alleges that Grucci's recommendations, under the supervision of Leo, were unsuitable, and Grucci appeared to have churned her account within the first six months after she gave him her funds. Claimant states that Grucci purchased 45,000 Oppenheimer New York tax free bond fund and sold the bonds within five months and invested \$45,000 in CSA Income Fund IV ("CSA"), generating additional commission to Grucci and loss to Claimant. Claimant states that in 1991, she invested \$96,000 in Hard Assets I and II coin limited partnerships, which Leo managed. Claimant also states that she did not receive a prospectus until July 1995 when she questioned the return of her money. Claimant further stated that at that time, she had received \$22,735.15 but could not get a clear accounting of her investments.

Respondent Grucci denies the allegations of wrongdoing, denies liability, and maintains that the investments were suitable for Claimant. Grucci maintains that Claimant authorized the purchase of \$45,000 in Oppenheimer Tax Exempt Bond Fund at the public offering price of \$12.19 per share but continuously confused the NAV with the public offering price, despite ongoing clarification from Grucci. Grucci also maintains that Oppenheimer's 1990 Supplemental Tax Form, reflected that Claimant redeemed the shares at \$12.19 per share on November 21, 1990. Grucci further maintains that prior to November 1990, Claimant authorized Educators and Grucci to liquidate her Oppenheimer bond fund and purchase 1,920 partnership units of American Income Fund I-A ("AIF I-A") instructed Oppenheimer to deposit all further limited partnership distributions to her Centennial Money Market Account. Grucci states that Claimant continues to receive distributions from the CSA and AIF I-A and that to date, Claimant received \$77,062.20.

Leo denies liability and contends that Claimant's allegations are factually incorrect and misleading. Leo contends that Claimant purchased her investments through Grucci and that

given Claimant's relationship with Grucci, Claimant's occupation as an antique and collectable dealer, her friendship with the owners of a respected coin shop in Patchogue, New York, and full disclosure of the fees, costs and risks concerning the investment in Hard Assets, Claimant invested in Hard Asset with full understanding of the investment. Leo contends that Claimant received \$46,735.14 on the Hard Asset investments, \$50,928.00 on the CSA partnership, and \$30,000 on the AIF I-A partnership. Leo also contends that it was not until Grucci's divorce from Claimant's grand daughter that claimant instructed Grucci to sell her Hard Asset investments. Leo states that Grucci was fired in September 1992 because he violated company and NASD rules and that the firing had nothing to do with Claimant's account. Leo states that Grucci stole documents from Educators, which the Suffolk County District Attorney improperly sent to Claimant. Leo also states that Claimant has improperly held on to those documents since 1993.

### **RELIEF REQUESTED**

Claimant objects to Respondents' Motions to Sever and to Dismiss her claims. Claimant requests an award of \$241,991.95, inclusive of interest.

Respondents request that their cases be severed and that the claims against them be dismissed as they were not timely filed.

### **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.

Respondent Grucci did not appear at the hearing in this matter. The panel made the following rulings as to Respondent Grucci :

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure ("the Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent Grucci was a person associated with a member of the NASD at the time the controversy arose. Accordingly, the panel found personal jurisdiction over Respondent Grucci, pursuant to Rule 10201/10301 of the Code.
3. In accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Respondent Grucci with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Respondent Grucci whose absence was unexcused.

Prior to the hearings, this panel denied Respondents' Motion to Sever. Respondents also moved to dismiss the claims against them pursuant to Rule 10304 of the *Code of Arbitration Procedure* ("*Code*"). This panel granted the Motion in part at the November 18, 1997 pre-hearing conference. Claimant's counsel filed a Motion for Reconsideration of this decision. The panel hereby grants the Motion for Reconsideration.

Claimant's claim for churning was withdrawn at the hearing.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is awarded a total of \$168,887.00, which includes interest. Respondents are liable as follows:  
Grucci is liable and shall pay Claimant \$98,932.20; and  
Leo is liable and shall pay Claimant \$69,954.80.
2. Respondent Leo's Counterclaim is denied.
3. All other claims for relief are 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 \$200.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees against Respondents:

4 Pre-hearing Conferences with the Chair	-	\$ 1,200.00
4 Pre-hearing Conferences with the Panel	-	3,000.00
6 Hearing Sessions	-	4,500.00
1 Post-Hearing Conference with the Panel	-	750.00
Total Forum Fees	-	\$ 9,450.00

1. Grucci is assessed the sum of \$5,670.00, which represents sixty percent (60%) of the total forum fees; and
2. Leo is assessed the sum of \$3,780.00, which represents forty percent (40%) of the total forum fees.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

Robert D. Herschman, Esq.	-	Public Chairperson
Julian Hess	-	Public Panelist
Robert L. Spangler	-	Industry Panelist

**CONCURRING ARBITRATOR'S SIGNATURE**

  
\_\_\_\_\_  
Robert D. Herschman, Esq.

Date of decision: DECEMBER 1, 1998

I, Robert D. Herschman, 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.

  
\_\_\_\_\_  
Robert D. Herschman, Esq.

**ARBITRATION PANEL**

Robert D. Herschman, Esq.	-	Public Chairperson
Julian Hess	-	Public Panelist
Robert L. Spangler	-	Industry Panelist

**CONCURRING ARBITRATOR'S SIGNATURE**

  
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Julian Hess

Date of decision: DECEMBER 1, 1998

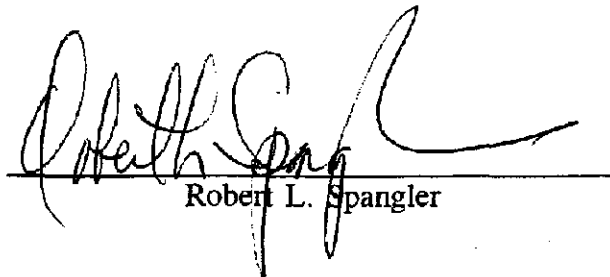
I, **Julian Hess**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Julian Hess

**ARBITRATION PANEL**

Robert D. Herschman, Esq.	-	Public Chairperson
Julian Hess	-	Public Panelist
Robert L. Spangler	-	Industry Panelist

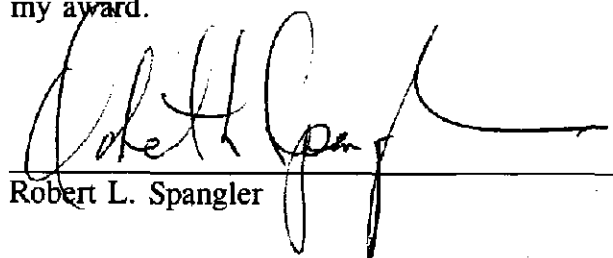
**CONCURRING ARBITRATOR'S SIGNATURE**



Robert L. Spangler

Date of decision: december 1, 1998

I, **Robert L. Spangler**, 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.



Robert L. Spangler