

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Tova Rosen, (Claimant) vs. Argent Securities, Inc. and Abraham Gutterman, (Respondents)

Case Number: 99-01643

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Tova Rosen ("Rosen"), hereinafter referred to as "Claimant": John M. Schwartz, Esq., Herzfeld & Rubin, P.C., New York, NY.

Respondent, Argent Securities, Inc. ("Argent"): Matthew Tracy, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

Respondent, Abraham Gutterman ("Gutterman"), appeared *pro se*. Previously represented by: Matthew Tracy, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY, with respect to the transactions which occurred through Argent Securities, Inc. only.

**CASE INFORMATION**

Statement of Claim filed on or about: April 7, 1999.

Claimant signed the Uniform Submission Agreement: March 26, 1999.

Joint Statement of Answer filed by Respondents on or about: January 14, 2000.

Argent did not sign the Uniform Submission Agreement.

Gutterman did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of the 1934 Act and the rules of the Securities and Exchange Commission; unsuitability; churning; misrepresentations; misappropriation of funds; failure to provide disclosure of margin information; breach of fiduciary duty; fraud; negligent misrepresentation; failure to disclose material facts; negligent supervision; breach of contract; and conversion.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents did not guarantee Claimant's return on any investments; Claimant contributed to and/or assumed the risk of her alleged losses; any losses sustained by Claimant resulted from the vagaries and volatilities of the securities markets, and not from any purported wrongdoing by Respondents; Argent fully

complied with all applicable rules and regulations regarding the supervision of Claimant's account; Claimant's portfolio must be considered in its entirety, and not just with respect to selected investments with which she might be unhappy; Claimant approved, authorized, and/or ratified the acts complained of; Claimant's claims are barred by the doctrines of estoppel, waiver, ratification, and laches; Claimant failed to mitigate her alleged damages; Claimant's claims are time-barred by virtue of the expiration of the applicable statutes of limitation; all risks concerning Claimant's investments were properly disclosed to Claimant; Claimant cannot assert claims based on violations of NASD, NYSE, or other self-regulatory organization rules as a matter of law; and Claimant is not entitled to punitive damages as a matter of law.

### **RELIEF REQUESTED**

Claimant requested an Award against Respondents as follows:

(a) Against Argent and Gutterman, jointly and severally, in an amount not less than \$137,000.00 calculated as follows:

- (i) \$69,300.00 representing the loss in Claimant's account at Argent;
- (ii) \$22,700.00 representing commissions paid in the Argent account; and
- (iii) \$45,000.00 representing funds invested in a purported private offering in "Peno's Pizza".

(b) Against Argent and Gutterman, jointly and severally, punitive damages in the amount of \$1,000,000.00;

(c) Against Argent in an amount not less than \$377,169.00, representing the subsequent losses in Claimant's account at TYM Securities, Inc.;

(d) Against Gutterman in the amount of \$23,000.00, representing the sums borrowed by him from Claimant and not repaid;

(e) Awarding Claimant reimbursement of all filing and/or forum fees advanced by Claimant; and

(f) Awarding Claimant such other and further relief as to the Panel seems just and proper.

Respondents requested: (1) dismissal of the Statement of Claim as against them; and (2) such other and further relief as the Panel deems just and appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Guttermann did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, and appeared at the hearing, is bound by the determination of the Panel on all issues submitted.

Prior to the hearing in this matter, Claimant entered into a settlement agreement with Argent, and entered into a partial settlement agreement with Guttermann regarding only the claims involving his employment with Argent.

During the hearing in this matter, Guttermann made a motion to adjourn which was denied by the Panel.

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.

### **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. Guttermann be and hereby is liable for and shall pay to Claimant the sum of \$68,000.00 as compensatory damages, plus interest at the rate of 9% per annum accruing from April 7, 1999 until paid.
2. Guttermann be and hereby is liable for and shall pay to Claimant the sum of \$135,000.00 as punitive damages. The Panel assessed punitive damages based upon its determination that Guttermann engaged in fraud.
3. Guttermann be and hereby is liable for and shall reimburse Claimant \$500.00 for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim 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 events giving rise to the dispute. In this matter, Argent Securities, Inc. is a party.

Member surcharge = \$2,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$4,500.00

#### **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:

One (1) Pre-hearing session with Panel x \$1,200.00 = \$1,200.00

Pre-hearing conference: March 20, 2000 1 session

Two (2) Hearing sessions x \$1,200.00 = \$2,400.00

Hearing Date: July 25, 2000 2 sessions

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Total Forum Fees = \$3,600.00

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

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 500.00

Total Fees = \$ 500.00

Less payments = \$1,700.00

Refund Due Claimant = \$1,200.00

2. Argent be and hereby is solely liable for:

<u>Member Fees</u>	= \$7,600.00
<u>Total Fees</u>	= \$7,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$7,600.00

3. Gutterman be and hereby is solely liable for:

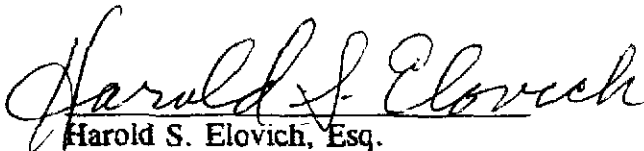
<u>Forum Fees</u>	= \$3,600.00
<u>Total Fees</u>	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

Gutterman be and hereby is solely liable for reimbursing Claimant \$500.00 for the filing fee previously paid to NASD Dispute Resolution, Inc. as stated in the "Award" section.

All balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

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.



Harold S. Elovich, Esq.  
Public Arbitrator, Presiding Chair

8/18/00  
Signature Date

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Allan N. Taffet, Esq.  
Public Arbitrator

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

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James Daniel Lamke  
Industry Arbitrator

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Signature Date

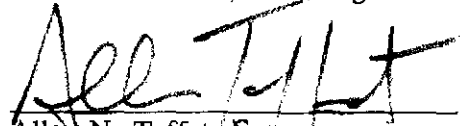
August 23, 2000  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

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.

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Harold S. Elovich, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Allan N. Taffet, Esq.  
Public Arbitrator

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

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James Daniel Lamke  
Industry Arbitrator

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Signature Date

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NASD Dispute Resolution, Inc.  
Arbitration No. 99-01643  
Award Page 8

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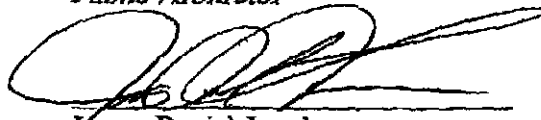
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Public Arbitrator, Presiding Chair

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Signature Date

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Allan N. Taffet, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
James Daniel Lamke  
Industry Arbitrator

8/21/00  
\_\_\_\_\_  
Signature Date

August 23, 2000  
Date of Service (For NASD office use only)