

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

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In the Matter of the Arbitration Between

Names of Claimants

Harry L. and Dorothy M. Keener  
Mary P. Matousek  
Charles and Jacqueline Schauert  
Helen Shepp  
Anna Kappra  
William Turpak  
Hazel Willis

Case No. 99-02641

Names of Respondents

Van Roberson Lewis, III  
Jay H. Drivas  
Michael F. Mann  
Hal Marlow  
Sunpoint Securities, Inc.

Third-Party Respondent

William M. Perry

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**REPRESENTATION OF PARTIES**

For Claimants Harry and Dorothy M. Keener ("Keener"), Charles and Jacqueline Schauert ("Schauert"), Helen Shepp ("Shepp"), Anna Kappra ("Kappra"), William Turpak ("Turpak"), Hazel Willis ("Willis") and Mary P. Matousek ("Matousek"): Allen J. Fedor, Esq. and Franell Fedor, Esq., Law Offices of Fedor and Fedor, Largo, Florida.

For Respondent Sunpoint Securities, Inc. ("SSI"): Andrew R. Korn, Esq. of Andrew R. Korn, P.C., Dallas, Texas until November 19, 1999. Thereafter, Respondent SSI was represented by Christopher A. Thompson, Esq. of Jackson Walker LLP, Dallas, Texas.

For Respondent Van Roberson Lewis III ("Lewis"): Andrew R. Korn, Esq. of Andrew R. Korn, P.C., Dallas, Texas until November 19, 1999. Thereafter, Respondent Lewis did not appear.

For Respondent Michael Mann ("Mann"): Elizabeth Hoskins Merrill, Esq., Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Tampa, Florida.

Respondents Jay H. Drivas ("Drivas") and Hal Marlow ("Marlow") appeared pro se.

For Third-Party Respondent William M. Perry ("Perry"): Jerry S. Harris, Esq., Harbour, Smith, Harris and Merritt, P.A., Longview, Texas.

### CASE INFORMATION

Statement of Claim filed: May 23, 1999.

Claimants Keener, Schauert, Shepp, Kappra, Turpak and Willis signed the Uniform Submission Agreements: May 6, 1999

Claimant Matousek signed the Uniform Submission Agreement: May 2, 1999.

Respondents SSI and Lewis' Statement of Answer, Statement of Counterclaim, Cross-Claim and Third-Party Claim filed: August 25, 1999.

Respondents SSI and Lewis did not file executed Uniform Submission Agreements.

Respondent Drivas' Statement of Answer filed: August 9, 1999.

Respondent Drivas signed the Uniform Submission Agreement: August 2, 1999.

Respondent Mann's Statement of Answer filed: August 19, 1999.

Respondent Mann signed the Uniform Submission Agreement: August 19, 1999.

Respondent Marlow's Statement of Answer filed: August 19, 1999.

Respondent Marlow signed the Uniform Submission Agreement.

Third- Party Respondent Perry's Answer to Third Party Claim filed: November 15, 1999.

Third- Party Respondent Perry did not file an executed Uniform Submission Agreement.

### CASE SUMMARY

Claimants alleged the following: Respondents sold them unsuitable, high-risk investments collectively totaling \$377,000.00. Claimants alleged Respondents made misrepresentations to them and omissions of material facts relating to the safety of those investments. The investments consisted of purchases of sub-prime notes offered by Keller Financial Services of Florida, Inc., USAA-1995 ("Keller") and Sovereign Credit III ("Sovereign"). Claimants asserted that the Respondents represented the investments as safe and conservative investments suitable to the Claimants' investments needs. Claimants relied on Respondents' purported professional financial advice and they were completely unaware that their principal was at high risk. Respondent Drivas stated that the notes were like certificates of deposit ("CD's") and that they would mature in five years with their principal intact. Respondent Drivas did not provide the Claimants with a prospectus, even though Florida law requires that a prospectus be given to a purchaser prior to each purchase. Most of the Claimants are elderly retirees who rely upon a limited, fixed income.

Claimants further alleged Respondents Drivas, Mann and SSI engaged in cheating and mismanagement of Claimants' accounts and funds; made repeated misrepresentations of material facts and omissions concerning the high risk nature of the investments; and failed to deliver prospectuses to the Claimants which constituted misrepresentation, omission, deceit and the employment of a device, scheme and artifice to defraud, and fraudulent transactions, in violation of Florida Statutes Sections 517.301, 517.07 and 817.29. Claimants further alleged Respondents engaged in a pattern of criminal activity in violation of Florida Statutes

Sections 772.102 (5) and (22), 772.103 and 772.104. Further, Claimants asserted claims for common law negligent misrepresentation, or, at a minimum, simple negligence and a breach of the fiduciary duty owed to the Claimants. Claimants next alleged Respondents SSI and Lewis failed to properly supervise the activities of its agents and representatives, Respondents Drivas, Mann and Marlow. Further, Respondent Marlow failed to properly supervise the activities of Respondent Drivas. Respondent Lewis, as the principal and president of SSI, failed to exercise proper due diligence by allowing the sub-prime securities at issue to be sold to the public and failed to properly supervise the activities of his agents and representatives, Respondents Drivas, Mann and Marlow. In addition, Respondent SSI was responsible for the conduct of the Respondent agents under the common law theory of respondeat superior.

Respondent Mann alleged that he relied, in good faith, upon the information provided to him by Respondent SSI and, in turn, provided the information given to him to his clients. Respondent Mann asserted that he made a responsible recommendation to his client, who made an informed investment decision.

Respondents SSI and Lewis alleged that through these arbitration proceedings, Claimants expect SSI and Lewis to be "insurers" of the investments that Claimants purchased and of the risk that Claimants expressed in the Subscription Agreements that Claimants were willing to accept.

Respondent Drivas alleged the following: All proper and required account forms, including the prospectuses, were given to all of his clients at the time of any purchase of the Keller notes; Respondent Drivas informed all of his clients of the risks associated with uninsured investments; and, all advertisements were approved by the home office and his branch manager, Respondent Marlow.

Respondent Marlow alleged the following: The Keller notes were approved for sale by SSI. Respondent Marlow further alleged that there was a relevant questionnaire to be completed by prospective investors that was submitted to SSI and signed by the client. Purportedly this was to enable SSI to make a fair determination as to suitability. Further, Respondent Marlow asserted he did not know Respondent Mann nor did he know any of the Claimants in this matter.

Respondents SSI and Lewis asserted the following counterclaims against Claimant Turpak: breach of the Subscription Agreement executed by Claimant Turpak with respect to his purchase of the Sovereign note; and indemnification pursuant to the Subscription Agreement.

Respondents SSI and Lewis asserted a cross-claim against Respondent Mann which alleged that pursuant to Paragraph IX of the May 10, 1994 Independent Registered Representative Agreement between Respondent Mann and SSI, Respondent Mann is obligated to SSI and Lewis for indemnity, defense and investigation costs in this case.

Respondents SSI and Lewis asserted a third-party claim against Third-Party Respondent Perry which alleged that pursuant to Paragraph IX of the January 1, 1992 Independent

Registered Representative Agreement between Third-Party Respondent Perry and SSI, Third-Party Respondent Perry is obligated to SSI and Lewis for indemnity, defense and investigation costs in this case.

Third-Party Respondent Perry requested that all claims against him be dismissed in their entirety and alleged the following: Respondents SSI and Lewis failed to properly serve Perry with any such claims; Respondents SSI and Lewis failed to pay the required filing fees in order to maintain such claims; Respondents SSI and Lewis have no claims against Third-Party Respondent Perry for a breach of a Representative Agreement or for indemnity under such Agreement where the Claimants were not customers of Perry for the sale of securities; the Agreement was terminated by its own terms; and, Respondent Lewis has no standing to recover or assert any claims or to recover from Third-Party Respondent Perry under any agreement.

### **RELIEF REQUESTED**

Claimants requested actual and compensatory damages for the securities purchased through Respondents, including legal interest based upon Florida Statutes Section 517.211, pursuant to violations of Florida Statutes Sections 517.301 and 517.07, in a collective amount in excess of \$324,000.00 with such damages also trebled pursuant to Florida's Criminal Practices, Florida Statutes Section 772.104 and for cheating pursuant to Florida Statutes Section 817.29, plus costs, expenses, disbursements in pursuing the arbitration proceedings, reasonable attorneys' fees in pursuing the arbitration to be awarded by a court of competent jurisdiction pursuant to Florida Statutes Section 517.211, and return of the \$1,425.00 filing and forum fee paid to NASD Regulation, Inc. Claimants also requested additional punitive damages over and above the compensatory damages and such other relief as the panel deemed just and proper.

Respondents SSI and Lewis requested that Claimants be awarded nothing for their claims. Further Respondents SSI and Lewis requested that Claimant Turpak indemnify them from and against any and all loss damage or liability due to or arising out of a breach of the Subscription Agreement with respect to Claimants' purchase of the Sovereign Note, plus award them their attorneys' fees, expenses, arbitration costs and expert witness fees incurred. Alternatively, to the extent necessary, SSI and Lewis asked that they be awarded damages on their third-party claim and cross-claim, respectfully, including indemnity, defense and investigation costs against Third-Party Respondent William M. Perry and Respondent Michael Mann and such other relief that the panel deemed just and proper.

Respondent Mann requested that all claims by Claimant Mary Matousek be dismissed against him and that his costs resulting from this arbitration be assessed against Claimant Matousek

Third Party Respondent Perry requested that he recover from Respondents SSI and Lewis all of his expenses, attorney's fees and any other relief as the arbitration panel deemed just and proper.

Respondents Drivas and Marlow did not specifically delineate a relief request.

### OTHER ISSUES CONSIDERED AND DECIDED

On November 19, 1999, Respondent Sunpoint Securities, Inc. was placed into involuntary receivership and liquidation proceedings by the Securities Investors Protection Corporation. By Order of the Bankruptcy Court for the United States District Court Eastern District of Texas dated December 21, 1999, all proceedings against Sunpoint Securities, Inc. were automatically stayed as provided in 11 U.S.C. 362(a).

On December 30, 1999, NASD Regulation, Inc. was provided with a copy of the Discharge Order of the United States Bankruptcy Court, Middle District of Florida for Respondent Jay H. Drivas. Said discharge enjoined all proceedings against Respondent Drivas herein. Therefore, the Panel did not make any determinations with respect to this Respondent.

At the preliminary hearing conducted on January 7, 2000, counsel for the Claimants requested that Claimant Matousek's claim against Respondent Mann be severed from the all of the other claims such that the remainder of the Claimants could expeditiously proceed against the other Respondents and that Matousek could proceed against Respondents Lewis and Marlow. Counsel for Mann concurred in said request and the panel approved the severance and bifurcation of Claimant Matousek's claim against Respondent Mann. Therefore, the arbitration panel reached no determinations with respect to Respondent Mann.

Third-Party Respondent Perry asserted a Motion to Dismiss in his Statement of Answer. On February 18, 2000, the Arbitration Panel issued an Order granting the Motion to Dismiss. Therefore, the third-party claim of Respondents SSI and Lewis against Third-Party Respondent Perry is dismissed, with prejudice.

On February 18, 2000, the Arbitration Panel was informed that the Claimants had entered into a settlement agreement with Respondent Marlow. Therefore, the arbitration panel made no determinations with respect to Claimants' claims against Respondent Marlow.

Respondents SSI, Lewis and Third-Party Respondent Perry did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the Arbitration Panel on all issues submitted.

Respondent Lewis did not attend the evidentiary hearing in this matter nor did a representative on his behalf attend. Upon review of the file and representations made by/on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Lewis had been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Lewis is found liable under both Florida Statutes Sections 517.301 and 517.07, for fraud and under the other alleged common law claims and shall pay to Claimant Keener actual and compensatory damages in the amount of \$43,842.93, inclusive of statutory legal interest, along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
2. Respondent Lewis is found liable under both Florida Statutes Sections 517.301 and 517.07, for fraud and under the other alleged common law claims and shall pay to Claimant Matousek actual and compensatory damages in the amount of \$52,017.38, inclusive of statutory legal interest, along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
3. Respondent Lewis is found liable under both Florida Statutes Sections 517.301 and 517.07, for fraud and under the other alleged common law claims and shall pay to Claimant Schauert actual and compensatory damages in the amount of \$136,317.52, inclusive of statutory legal interest, along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
4. Respondent Lewis is found liable under both Florida Statutes Sections 517.301 and 517.07, for fraud and under the other alleged common law claims and shall pay to Claimants Shepp and Kappra actual and compensatory damages in the amount of \$26,292.15, inclusive of statutory legal interest, along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
5. Respondent Lewis is found liable under both Florida Statutes Sections 517.301 and 517.07, for fraud and under the other alleged common law claims and shall pay to Claimant Turpak actual and compensatory damages in the amount of \$36,952.12, inclusive of statutory legal interest, along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
6. Respondent Lewis is found liable under both Florida Statutes Sections 517.301 and 517.07, for fraud and under the other alleged common law claims and shall pay to Claimant Willis actual and compensatory damages in the amount of \$29,786.46, inclusive of statutory legal interest, along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.

7. Respondent Lewis is found liable by clear and convincing evidence under Florida Statutes Sections 772.102(5) and (22), 772.103, 772.104, and shall pay to Claimant Keener threefold actual damages sustained in the additional amount of \$131,528.79 along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
8. Respondent Lewis is found liable by clear and convincing evidence under Florida Statutes Sections 772.102(5) and (22), 772.103, 772.104, and shall pay to Claimant Matousek threefold actual damages sustained in the additional amount of \$156,052.14 along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
9. Respondent Lewis is found liable by clear and convincing evidence under Florida Statutes Sections 772.102(5) and (22), 772.103, 772.104, and shall pay to Claimant Schauert threefold actual damages sustained in the additional amount of \$408,952.56 along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
10. Respondent Lewis is found liable by clear and convincing evidence under Florida Statutes Sections 772.102(5) and (22), 772.103, 772.104, and shall pay to Claimants Shepp and Kappra threefold actual damages sustained in the additional amount of \$78,876.45 along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
11. Respondent Lewis is found liable by clear and convincing evidence under Florida Statutes Sections 772.102(5) and (22), 772.103, 772.104, and shall pay to Claimant Turpak threefold actual damages sustained in the additional amount of \$110,856.36 along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
12. Respondent Lewis is found liable by clear and convincing evidence under Florida Statutes Sections 772.102(5) and (22), 772.103, 772.104, and shall pay to Claimant Willis threefold actual damages sustained in the additional amount of \$89,359.38 along with post award legal interest from February 19, 2000, the date following the last hearing date, until this Award is paid in full.
13. Respondent Lewis shall pay to Claimants the sum of \$500,000.00 as *punitive damages*, along with post Award interest at the legal rate from February 19, 2000 to the date of full payment of the Award. The panel finds that Respondent Lewis engaged in a willful, wanton, malicious and methodical scheme to defraud and deceive Claimants, that he engaged in gross misconduct, that the conduct complained of was of such a character as to evidence an entire want of care, raising a presumption of conscious indifference to its consequences. Further, the conduct of Respondent Lewis was of a wanton, malicious and reckless nature evidencing a gross and careless disregard for the Claimants as well as a reckless indifference to their rights so as to be equivalent to an intentional violation of their rights.

14. Respondent Lewis is found liable and shall pay to the Claimants \$3,706.81 for their out-of-pocket costs in this matter.
15. Respondent Lewis is liable and shall pay to Claimants the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Regulation, Inc.
16. All issues relating to the entitlement to and amount of attorney's fees to be awarded shall be determined by a court of competent jurisdiction pursuant to Florida Statutes Sections 517.301, 517.211(6) and 772.104.
17. Respondents SSI and Lewis' cross-claim against Respondent Mann is dismissed, without prejudice.
18. Respondents SSI and Lewis' counter claims against Claimant Turpak are dismissed, with prejudice.
19. All requests for relief not specifically addressed herein are 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 = \$300.00

Counter claim/Cross claim/Third Party claim filing fee = \$1,000.00

##### **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 \$1,125.00 = \$1,125.00  
Pre-hearing conference: January 7, 2000 1 session

Two (2) Hearing sessions x \$1,125.00 = \$2,250.00  
Hearing Date: February 18, 2000 2 sessions

Total Forum Fees = \$3,375.00

The Panel has assessed \$2812.50 of the forum fees to Respondent Lewis.

The Panel has assessed \$562.50 of the forum fees to Claimants.



Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$562.50
Total Fees	= \$862.50
<u>Less payments</u>	<u>= \$862.50</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent Lewis be and hereby is liable for:

Third-Party Filing Fee	= \$1,000.00
Total Fees	= \$1,000.00
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,000.00

Respondent Lewis be and hereby is solely liable for:

Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$2,812.50

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

Concurring Arbitrators= Signatures

\_\_\_\_\_/S/\_\_\_\_\_  
Frank J. Tepper, Esq.  
Public Arbitrator, Presiding Chair

March 21, 2000  
Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Patricia A. Renovitch  
Public Arbitrator

March 16, 2000  
Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Heather D. Fitzenhagen, Esq.  
Industry Arbitrator

March 29, 2000  
Signature Date

March 29, 2000  
Date of Service (For NASD office use only)

Award 99-02641

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$562.50
Total Fees	= \$862.50
<u>Less payments</u>	<u>= \$862.50</u>
Balance Due NASD Regulation, Inc.	= \$0.00

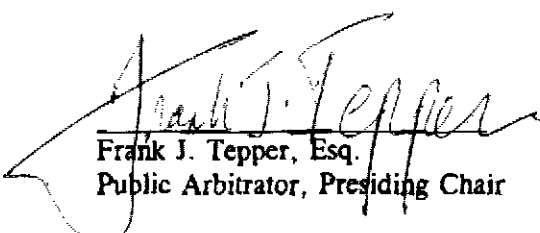
Respondent Lewis be and hereby is liable for:

Third-Party Filing Fee	= \$1,000.00
Total Fees	= \$1,000.00
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,000.00

Respondent Lewis be and hereby is solely liable for:

Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$2,812.50

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

Concurring Arbitrators- Signatures  
Frank J. Tepper, Esq.  
Public Arbitrator, Presiding Chair3/21/10  
Signature Date\_\_\_\_\_  
Patricia A. Renovitch  
Public Arbitrator\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Heather D. Fitzhagen, Esq.  
Industry Arbitrator\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Date of Service (For NASD office use only)

Award 99-02641

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Claimants be and hereby are jointly and severally liable for:

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Forum Fees	= \$562.50
Total Fees	= \$862.50
<u>Less payments</u>	<u>= \$862.50</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent Lewis be and hereby is liable for:

Third-Party Filing Fee	= \$1,000.00
Total Fees	= \$1,000.00
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,000.00

Respondent Lewis be and hereby is solely liable for:

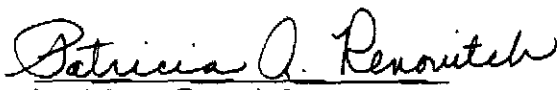
Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$2,812.50

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

Concurring Arbitrators- Signatures

\_\_\_\_\_  
Frank J. Tepper, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Patricia A. Renovitch  
Public Arbitrator

3/16/00  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Heather D. Fitzenhagen, Esq.  
Industry Arbitrator

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

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

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Initial Filing Fee	= \$300.00
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Total Fees	= \$862.50
<u>Less payments</u>	<u>= \$862.50</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent Lewis be and hereby is liable for:

Third-Party Filing Fee	= \$1,000.00
Total Fees	= \$1,000.00
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,000.00

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Frank J. Tepper, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Patricia A. Renovitch  
Public Arbitrator

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

  
\_\_\_\_\_  
Heather D. Fitch, Esq.  
Industry Arbitrator

3/24/00  
\_\_\_\_\_  
Signature Date

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