

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

**In the Matter of the Arbitration Between**

**Name of Claimant**

**Muriel Hecht Revocable Trust**

**Case No. 99-04907**

**Names of Respondents**

**Preferred Securities Group, Inc.  
Victor Lessinger  
Anthony J. Rotonde  
Jeffrey Malken  
Richard S. Fleischner**

**Hearing Site: Boca Raton, Florida**

**REPRESENTATION OF PARTIES**

For Muriel Hecht Revocable Trust, hereinafter referred to as "Claimant": Patricia A. Shub, Esq., Fort Lauderdale, Florida.

For Preferred Securities Group, Inc. ("Preferred") and Victor Lessinger ("Lessinger"): Victor A. Lessinger, Preferred Securities Group, Inc., Boca Raton, Florida.

For Anthony J. Rotonde ("Rotonde"): Carole R. Bernstein, Esq., Westport, Connecticut.

For Jeffrey Malken ("Malken") and Richard S. Fleischner ("Fleischner"): Glenn D. Kelley, Esq., Kelley & Warren, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 28, 1999.

Claimant's Uniform Submission Agreement signed on : June 11, 1999, by Muriel Hecht, Trustee.

Joint Statement of Answer filed by Respondents Preferred, Lessinger and Rotonde on or about: April 10, 2000.

Joint Statement of Answer filed by Respondents Malken and Fleischner on or about: April 19, 2000.

Respondent Malken signed the Uniform Submission Agreement on: April 3, 2000.

Respondent Fleischner signed the Uniform Submission Agreement on: April 3, 2000.

Respondents Preferred, Lessinger and Rotonde did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentation; unsuitability; breach of fiduciary/contractual duty; violations of Section 517.301 of the Florida Securities and Investor Protection Act, Florida Common Law of Fraud; failure to supervise; and, negligence, in connection with the sale of securities or investments through the means of

interstate commerce. The causes of action relate to the purchase of shares of stock in the following: AMCOR Capital Corporation ("AMCOR"); Sotheby Capital Securities Corporation ("Sotheby"); and, Keller Financial Services Fla., Inc. ("Keller").

Unless specifically admitted in their Answer, Respondents Preferred, Lessinger and Rotonde denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following affirmative defenses: Claimant's Statement of Claim is barred, in whole or in part, by Claimant's failure to state a claim upon which relief may be granted; Claimant's Statement of Claim is barred, in whole or in part, by applicable statutes of limitation, by Claimant's failure to mitigate damages, by Claimant's own negligence, by Claimant's failure to exercise due diligence or care, by Claimant's failure to plead fraud and deceit with particularity, by the doctrines of estoppel, waiver and laches as well as by the unclean hands of Claimant's trustee, who appears to have breached fiduciary duties she owed to a trust she negligently oversaw; and, the Statement of Claim is barred, in whole or in part, by the indemnification provision executed by Claimant through its trustee.

Unless specifically admitted in their Answer, Respondents Malken and Fleischner denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following affirmative defenses: The claims asserted are barred by the applicable statutes of limitation and/or statute of repose; Claimant assumed the risk of any investments made through or with Respondents; Claimant failed to mitigate any losses she may have suffered as a result of investments made through Respondents; Claimant ratified and confirmed all investments made through or with Respondents; and, any losses suffered by Claimant were the result of Claimant's own negligence and failure to exercise reasonable care.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of approximately \$135,000.00, punitive damages as permitted by law, interest, arbitration costs and attorneys' fees, pursuant to Section 517.301, Florida Statutes.

Respondents Preferred, Lessinger and Rotonde requested a dismissal of all claims against them and that they be awarded reasonable attorneys' fees and costs incurred in connection with this matter.

Respondents Malken and Fleischner requested a dismissal of all claims asserted by the Claimant against them, that they be awarded their attorneys' fees and costs incurred in defense of this matter and that the Panel refer the issue of attorneys' fees to a court of competent jurisdiction, in accordance with Florida law.

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

Respondents Preferred, Lessinger and Rotonde did not file with NASD Dispute Resolution, Inc. 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 Panel on all issues submitted.

Respondent Rotonde did not attend the evidentiary hearing. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Rotonde has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Respondent Rotonde present, in accordance with Rule 10318 of the Code.

Kenneth T. Hynd ("Hynd") was a named party to this proceeding. On or about May 3, 2001, Hynd filed with NASD Dispute Resolution, Inc. a Suggestion of Bankruptcy which stated that on April 24, 2001, a Voluntary Petition for relief under Chapter 7, Title 11 of the United States Bankruptcy Code was filed by Hynd in the United States Bankruptcy Court for the Southern District of Florida. As such, this matter was stayed with respect to Hynd and the Panel made no determinations with respect to Hynd.

On or about June 4, 2001, Claimant advised NASD Dispute Resolution, Inc. that she had reached a settlement agreement with Respondents Malken and Fleischner. Thereafter, the Panel made no determinations with respect to Respondents Malken and Fleischner.

### 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. Respondents Preferred, Lessinger and Rotonde are found liable, jointly and severally, on the claims of suitability and failure to supervise and shall pay to Claimant compensatory damages in the amount of \$42,294.90, plus pre-judgment interest at the following rates: 10% per annum from June 30, 1999 to December 31, 2000; 11% per annum from January 1, 2001 to December 31, 2001; and, 9% per annum from January 1, 2002 to April 1, 2002. Interest ceases to accrue upon payment of the Award.
2. Respondents Preferred, Lessinger and Rotonde are found liable, jointly and severally, and shall pay to Claimant attorneys' fees, pursuant to Sections 517.301 and 517.211, Florida Statutes, the amount of which shall be determined by a court of competent jurisdiction.
3. Respondents Preferred, Lessinger and Rotonde are found liable, jointly and severally, and shall pay to Claimant costs in the amount of \$3,653.72.
4. Claimant shall return all interests (equity and any further rights), written or implied, to the appropriate office of Preferred by the execution of a relinquishing document to Sotheby Capital Securities Corporation and Keller Financial Services Fla., Inc., respectively.
5. Respondents Preferred, Lessinger and Rotonde are found liable, jointly and severally, and shall pay to Claimant the sum of \$300.00, representing the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

6. Any and all requests for relief not specifically addressed herein, including Claimant's request for punitive damages and Respondents' requests for attorneys' fees, are 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	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Dates: October 30, 31 and November 1, 2002

Adjournment requested by Respondents Preferred, Lessinger and Rotonde	= \$1,125.00
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#### **Forum Fees and Assessments**

The Panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Eight (8) Hearing sessions x \$1,125.00	= \$9,000.00
Hearing Dates:	
June 5, 2001	2 sessions
June 6, 2001	2 sessions
March 20, 2002	2 sessions
March 21, 2002	2 sessions

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Total Forum Fees	= \$9,000.00
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The Panel has assessed \$4,500.00 of the forum fees to Claimant.

The Panel has assessed \$4,500.00 of the forum fees jointly and severally to Respondents Preferred, Lessinger and Rotonde.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$4,500.00
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Total Fees	= \$4,800.00
Less payments	= \$1,425.00
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Balance Due NASD Dispute Resolution, Inc.	= \$3,375.00

Respondent Preferred be and hereby is solely liable for:

Member Fees	= \$4,600.00
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Total Fees	= \$4,600.00
Less payments	= \$ 0.00
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Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

Respondents Preferred, Lessinger and Rotonde be and hereby are jointly and severally liable for:

Forum Fees	= \$4,500.00
Adjournment Fee	= \$1,125.00
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Total Fees	= \$5,625.00
Less payments	= 0.00
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Balance Due NASD Dispute Resolution, Inc.	= \$5,625.00

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

receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Lawrence M. Green	-	Public/Presiding Chair
Seymour Herman, Esq.	-	Public/Panelist
David A. Pracker	-	Non-Public/Panelist

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Lawrence M. Green  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/s/\_\_\_\_\_  
Seymour Herman, Esq.  
Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
David A. Pracker  
Non-Public Arbitrator

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

April 30, 2002

Date of Service (For NASD-Dispute Resolution office use only)


receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Lawrence M. Green  
Seymour Herman, Esq.  
David A. Pracker

- Public/Presiding Chair  
- Public/Panelist  
- Non-Public/Panelist

**Concurring Arbitrators' Signatures**

  
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Lawrence M. Green  
Public Arbitrator, Presiding Chair

04-30-02  
Signature Date

\_\_\_\_\_  
Seymour Herman, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
David A. Pracker  
Non-Public Arbitrator

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

\_\_\_\_\_  
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Lawrence M. Green  
Public Arbitrator, Presiding Chair

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

Seymour Herman  
Seymour Herman, Esq.  
Public Arbitrator

4/30/02  
Signature Date

\_\_\_\_\_  
David A. Pracker  
Non-Public Arbitrator

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

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Lawrence M. Green  
Public Arbitrator, Presiding Chair

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Signature Date

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Seymour Herman, Esq.  
Public Arbitrator

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Signature Date

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David A. Pracker  
Non-Public Arbitrator

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Signature Date