

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

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In the Matter of the Arbitration Between:

Robert and Lorraine Liere, (Claimants) vs. Milestone Financial Services, Inc. and Edward Cahill, (Respondents)

Case Number: 00-00523

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Robert and Lorraine Liere, hereinafter collectively referred to as "Claimants": Robert J. Cava, Esq., Law Offices of Robert J. Cava, P.C., West Babylon, NY.

Respondents, Milestone Financial Services, Inc. ("Milestone") and Edward Cahill ("Cahill"), hereinafter collectively referred to as "Respondents": Steven A. Samide, Esq., Mintz & Gold LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 3, 2000.

Response to Motion to Dismiss filed by Claimants on or about: May 3, 2000.

Claimants signed the Uniform Submission Agreement: January 26, 2000.

Statement of Answer and Motion to Dismiss filed by Respondents on or about: April 20, 2000.

Milestone signed the Uniform Submission Agreement: April 4, 2000.

Cahill signed the Uniform Submission Agreement: March 15, 2000.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to execute Claimants' stop loss order to sell Fruit of the Loom Inc. stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants have failed to state a claim for which relief may be granted; Claimants authorized, directed the execution of, and ratified all transactions in their securities account with full knowledge of all material facts with respect thereto; Claimants' claims are barred by the applicable principles of waiver, ratification, and estoppel; all transactions which occurred in Claimants' securities account were carried out in accordance with the instructions of Claimants and in conformity with all applicable rules, regulations, industry standards, and practices; Respondents, in discharging

their duties to Claimants, acted in good faith and exercised at least that degree of care, diligence, and skill which an ordinarily prudent person would exercise in similar circumstances and like position; Claimants assumed the risks of their investments; Claimants failed to mitigate their damages; the damages allegedly suffered by Claimants have no causal relationship with any act or omission committed by or legally attributable to Respondents; and Claimant's claims are barred by the doctrine of unclean hands.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$193,047.50 plus margin interest in the amount of \$9,492.82, interest from January 26, 1999, costs, disbursements, and attorneys' fees.

Respondents requested that the Panel: (i) dismiss the Statement of Claim in its entirety; (ii) award Respondents their costs and expenses of this arbitration including, without limitation, reasonable attorneys' fees; and (iii) grant Respondents such other and further relief as is just and proper.

#### **OTHER ISSUES CONSIDERED AND 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.

#### **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. Claimants' claims are hereby dismissed in their entirety.
2. 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 = \$ 300.00

#### **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, Milestone Financial Services, Inc. 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:

December 7 & 8, 2000, adjournment by Claimants and Respondents = \$ 562.50 each

#### **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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$2,250.00

Pre-hearing conferences: August 11, 2000 1 session  
November 16, 2000 1 session

Three (3) Hearing sessions x \$1,125.00 = \$3,375.00

Hearing Dates: March 29, 2001 2 sessions  
March 30, 2001 1 session

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Total Forum Fees = \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,675.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00
  
2. Milestone be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
  
3. Respondents be and hereby are jointly and severally liable for:

Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,375.00
<u>Less payments</u>	<u>= \$1,125.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

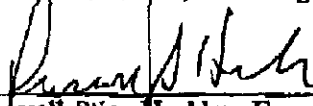
All balances are due and payable to NASD Dispute Resolution, Inc.

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**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.

Gary W. Sherbell, Esq.  
Public Arbitrator, Presiding Chair



Russell Stine Heckler, Esq.  
Public Arbitrator

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

4/10/01  
\_\_\_\_\_  
Signature Date

Robert A. Vaccaro  
Industry Arbitrator

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

April 18, 2001  
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.

Gary W. Sherbell  
Gary W. Sherbell, Esq.  
Public Arbitrator, Presiding Chair

4/12/01  
Signature Date

Russell Stine Heckler, Esq.  
Public Arbitrator

                      
Signature Date

Robert A. Vaccaro  
Industry Arbitrator

                      
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Russell Stine Heckler, Esq.  
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