

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Albert A. Pacelli, as Trustee for the Albert A. Pacelli Trust

v.

Respondents

Rothschild Investment Corporation

Byron R. Marshall

and

Counter Claimant

Rothschild Investment Corporation

v.

Counter Respondent

Albert A. Pacelli, as Trustee for the Albert A. Pacelli Trust

Case Number: 00-03355

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Albert A. Pacelli, as Trustee for the Albert A. Pacelli Trust, ("Pacelli"): Peter J. Berman, Esq., with offices located in Chicago, Illinois.

Rothschild Investment Corporation ("Rothschild"): Robert W. Edler, Esq. Thiedman & Edler located in Chicago, Illinois.

Byron R. Marshall ("Marshall"): Les Blau, Esq., Blau & Bonavich located in Chicago, Illinois.

### **CASE INFORMATION**

#### **Pleadings**

Statement of Claim filed on or about: August 10, 2000.

Pacelli signed the Uniform Submission Agreement on August 2, 2000.

Rothschild filed a Statement of Answer and Counterclaim for Malicious Prosecution on or about October 9, 2000.

Rothschild Investment Corporation signed the Uniform Submission Agreement on September 29, 2000.

Marshall filed a Statement of Answer on or about October 4, 2000.

Marshall signed the Uniform Submission Agreement on September 28, 2000.

Pacelli's Answer to Respondent Rothschild's Counterclaim was filed on or about October 13, 2000.

Rothschild's Reply to Claimant's Answer to its Counterclaim was filed on or about: October 26, 2000.

#### **Prehearing Briefs**

Rothschild's Pre-hearing Brief was filed on or about September 21, 2001.

Pacelli's Pre-hearing Brief was filed on or about October 22, 2001.

#### **Amended Statement of Claim**

Pacelli's Amended Statement of Claim on or about: October 23, 2001.

Marshall's objection to Amended Statement of Claim filed on or about: October 25, 2001.

Pacelli's Reply to Respondent Marshall's objection to Amended Statement of Claim filed on or about: October 25, 2001.

Rothschild's objection to Amended Statement of Claim filed on or about: October 26, 2001.

Pacelli's Memorandum in Support of his Amended Statement of Claim filed on or about: October 31, 2001.

Rothschild filed a Response to Claimant's Memorandum in support of its Amended Statement of Claim on or about: November 15, 2001.

Pacelli filed a Reply to Respondent Rothschild objection to Amend Statement of Claim on or about: November 16, 2001.

### **Other Motions**

Rothschild's Motion for Partial Findings with Respect to all Six Counts of Pacelli's Amended Statement of Claim was filed on or about May 10, 2002.

Pacelli's Motion to Strike Respondent Rothschild's Motion for Partial Findings with Respect to all Six Counts of Pacelli's Amended Statement of Claim was filed on or about May 15, 2002.

Rothschild filed a Motion for Reconsideration of the panel's denial of the Motion for Partial Findings on or about: June 6, 2002.

Pacelli filed a Response to Rothchild's Motion for Reconsideration of the panel's denial of the Motion for Partial Findings on or about: June 13, 2002.

Rothchild filed a Motion for Sanctions at hearing on July 31, 2002.

Rothchild's Motion for an order to Expunge its CRD presented at the July 31, 2002 hearing.

### **CASE SUMMARY**

Pacelli asserted the following causes of action: Breach of Fiduciary Duty, Unauthorized Trading, Manipulations, Conversion and Margin Calls. The causes of action relate to investments and the sale of securities in the Pacelli's Trust Account.

Unless specifically admitted in the Statement of Answer, Rothschild denied the allegations made in the Statement of Claim and asserted unspecified defenses.

Unless specifically admitted in the Statement of Answer, Marshall denied the allegations made in the Statement of Claim and asserted the defenses: Pacelli failed to object to the commissions or margin interest.

Rothchild asserted the following causes of action: Malicious prosecution. Unless specifically admitted in the Statement of Answer, Pacelli denied the allegations made in the Counter Claim.

**RELIEF REQUESTED**

**Pacelli requested:**

Compensatory Damages	\$ 70,000.00
Punitive Damages	\$ 140,000.00
Interest	5% per annum
Attorneys' Fees	unspecified
Other Costs	unspecified

**Rothschild requested:**

Attorneys' Fees	unspecified
Other Costs	unspecified
Other/Non Monetary Damages:	Sanctions, Expungement, dismissal of claims, and any relief deemed just and appropriate

**Marshall requested:**

Attorneys' Fees	unspecified
Other Costs	unspecified
Other/Non Monetary Damages:	dismissal of claim and any relief deemed just and appropriate

**OTHER ISSUES CONSIDERED AND DECIDED**

Pursuant to 10328(b) of the NASD Code of Arbitration Procedure, Pacelli's Amended Statement of Claim was accepted by the undersigned Panel on or about: November 20, 2001.

On or about May 31, 2002 the panel denied Rothschild's Motion for Partial Findings with Respect to all Six Counts of Claimant's Amended Statement of Claim.

At the hearing held on June 18, 2002 the panel denied Rothchild's Motion for Reconsideration of the panel's denial of the Motion for Partial Findings.

### **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. Rothschild Investment Corporation and Byron R. Marshall are jointly and severally liable for and shall pay to Albert A. Pacelli, as Trustee for the Albert A. Pacelli Trust the sum of Forty Four Thousand Two Hundred and Thirty One Dollars and Ninety-Four Cents (\$44,231.94) as Compensatory Damages.
2. Respondent Rothchild Investment Corporation's request for Sanctions is denied.
3. Respondent Rothchild Investment Corporation's expungement request is denied.
4. Any and all claims asserted by Respondent Rothchild Investment Corporation's against Albert A. Pacelli Trust are denied in their entirety.
5. Notwithstanding any private agreement to the contrary, each party is to bear and sustain their own attorney's fees and costs without award, contribution or indemnity from any other party.
6. Any and all relief not specifically addressed herein, including Punitive Damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	= \$ 300.00
Counter 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. Rothschild Investment Corporation is a party to this matter.

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

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with Panel @ \$1,125 .00	= \$ 3,375.00
Pre-hearing conferences: May 8, 2001	1 session
May 24, 2001	1 session
November 20, 2001	1 session

Twenty-Eight (28) Hearing sessions @ \$1,125.00	= \$31,500.00
Hearing Dates: December 18, 2001	2 sessions
December 19, 2001	2 sessions
December 20, 2001	2 sessions
January 15, 2002	2 sessions
January 16, 2002	2 sessions
January 17, 2002	2 sessions
March 19, 2002	2 sessions
March 21, 2002	2 sessions
March 22, 2002	2 sessions
June 18, 2002	2 sessions
June 19, 2002	2 sessions
June 20, 2002	2 sessions
June 21, 2002	2 sessions
July 31, 2002	2 sessions

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Total Forum Fees	= \$34,875.00
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1. The Panel has assessed \$17,437.50 of the forum fees to Albert A. Pacelli.
2. The Panel has assessed \$17,437.50 of the forum fees jointly severally to Rothschild Investment Corporation and Byron R. Marshall.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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|---|-------------|
| 1. Claimant requested copies of documents           | = \$ 10.50  |
| 2. Respondent Marshall requested tapes of hearings  | = \$ 165.00 |
| 3. Respondent Rothchild requested tapes of hearings | = \$ 495.00 |

**FEF SUMMARY**

1. Claimant Albert A. Pacelli is solely liable for:

Forum Fees	= \$17,437.50
Administrative Costs	= \$ 10.50
<u>Initial Filing Fee</u>	<u>= \$ 300.00</u>
Total Fees	= \$17,748.00
<u>Less payments</u>	<u>= \$10,300.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,448.00

2. Respondent Rothschild Investment Corporation is solely liable for:

Counter Claim Filing Fee	= \$ 500.00
Administrative Costs	= \$ 495.00
<u>Member Fees</u>	<u>= \$ 4,600.00</u>
Total Fees	= \$ 5,595.00
<u>Less payments</u>	<u>= \$ 5,595.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

3. Respondents Rothschild Investment Corporation and Byron R. Marshall are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$17,437.50</u>
Total Fees	= \$17,437.50
<u>Less payments</u>	<u>= \$ 9,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,937.50

4. Respondent Byron R. Marshall is solely liable for:

<u>Administrative Costs</u>	<u>= \$ 165.00</u>
Total Fees	= \$ 165.00
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 165.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Glenn H. Rosenthal, Esq. - Public Arbitrator, Presiding Chair

Stuart D. Perlman, Esq. - Public Arbitrator

Paul J. Litteau - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Glenn H. Rosenthal

09/05/02

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Glenn H. Rosenthal, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

/s/ Stuart D. Perlman

09/05/02

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Stuart D. Perlman, Esq.  
Public Arbitrator

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

/s/ Paul J. Litteau

09/06/02

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Paul J. Litteau  
Non-Public Arbitrator

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Signature Date

09/09/02

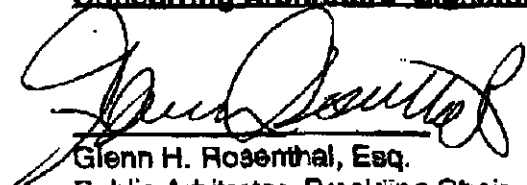
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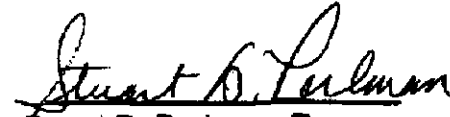
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Signature Date

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