

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 00-03876

Alfred Feinblatt, individually
and as trustee of the A. J. Feinblatt Trust,
authorized agent for the Alex Brown LLC
FBO Custodian for A. J. Feinblatt IRA, and as
authorized agent for the Wooddale Chiropractic Clinic, Ltd.

Donna M. Feinblatt, individually
and as trustee of the D. M. Feinblatt Trust, and as
authorized agent for the Alex Brown LLC
FBO Custodian FBO D. M. Feinblatt IRA.

Geoffrey Feinblatt, individually and as
authorized agent for Alex Brown LLC
FBO Custodian for Geoffrey Feinblatt IRA

Aaron Feinblatt, individually and as
authorized agent for Alex Brown LLC
FBO Custodian for Aaron Feinblatt IRA

Name of the Respondents

Hearing Site: Chicago, Illinois

Auerbach, Pollack & Richardson,
Aegon USA Securities, Inc.,
Ladenburg, Thalmann & Co., Inc.,
Frank Monte, Mark George, Robert N. Drake,
John A. Zakar, Jr., Par Trade Securities,
and Saperstein Financial

REPRESENTATION OF PARTIES

Claimants **Alfred Feinblatt**, individually and as trustee of the A. J. Feinblatt Trust, authorized agent for the Alex Brown LLC FBO Custodian for A. J. Feinblatt IRA, and as authorized agent for the Wooddale Chiropractic Clinic, Ltd, **Donna M. Feinblatt**, individually and as trustee of the D. M. Feinblatt Trust, and as authorized agent for the Alex Brown LLC FBO Custodian FBO D. M. Feinblatt IRA, **Geoffrey Feinblatt**, individually and as authorized agent for Alex Brown LLC FBO Custodian for Geoffrey Feinblatt IRA, and **Aaron Feinblatt**, individually and as authorized agent for Alex Brown LLC FBO Custodian for Aaron Feinblatt IRA hereinafter collectively referred to as ("Claimants"): John A. Dienner, Esq. of the firm Kubasiak, Cremieux, Flystra, Reizen, & Rotunno located in Chicago, Illinois.

Respondent Auerbach, Pollack & Richardson ("Auerbach"): Hugh Regan, located in New York, New York. Previously, it had been represented by Ross J. Ellick, Esq. of the firm Kurzman, Eisenberg, Corbin, Lever & Goodman with offices located in New York, New York. It was originally represented by Ruthann G. Niosi, Esq. with law offices located in New York, New York.

Respondent Aegon USA Securities, Inc. ("Aegon"): David A. Genelly, Esq. of the firm Vanasco, Genelly & Miller located in Chicago, Illinois.

Respondent Ladenburg, Thalmann & Co., Inc. ("Ladenburg"): David S. Smith, Esq. of the firm Smith Campbell, LLP with offices located in New York, New York.

Respondent Frank Monte ("Monte") was *pro se*. He was originally represented by Ruthann G. Niosi, Esq. with law offices located in New York, New York.

Respondents Mark George ("George") and John A. Zakar, Jr. ("Zakar"): Dan Druz, Esq. with law offices located in Manasquan, New Jersey. They were originally represented by Ruthann G. Niosi, Esq. with law offices located in New York, New York.

Respondent Robert N. Drake ("Drake"): Ross J. Ellick, Esq. of the firm Kurzman, Eisenberg, Corbin, Lever & Goodman with offices located in New York, New York. He was originally represented by Ruthann G. Niosi, Esq. with law offices located in New York, New York.

Respondent Par Trade Securities ("Par Trade") did not appear.

Respondent Saperstein Financial ("Saperstein") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: September 05, 2000.

Claimants each signed the Uniform Submission Agreement: August 24, 2000.

Joint Statement of Answer filed by Auerbach, Monte, George, Drake, and Zakar on or about: December 07, 2000.

Statement of Answer filed by Ladenburg on or about: November 13, 2000.

Respondent Ladenburg signed the Uniform Submission Agreement: November 06, 2000.

Statement of Answer filed by Aegon on or about: November 28, 2000.

Respondent Aegon signed the Uniform Submission Agreement: October 04, 2000.

Joint Motion to Dismiss Respondents Drake and Monte filed on or about: December 07, 2000.

Joint Motion for a More Particular Statement as against Respondents Drake and Monte filed on or about: December 07, 2000.

Response to Joint Motion to Dismiss and for a More Particular Statement Respondents Drake and Monte filed on or about: May 07, 2002.

Respondents Drake and Zakar's Renewed request for expungement filed on or about: December 03, 2002.

CASE SUMMARY

Claimants Feinblatt asserted the following causes of action: Violation of Section 10 (b), Rule 10b-5 of the Securities Exchange Act, Violation of the Illinois Consumer Fraud and Deceptive Practices Act, Common Law Fraud, Negligent Supervision, Common Law Negligence, Failure to Supervise, Breach of Fiduciary Duty, Churning, and Unsuitability.

The causes of action relate to the AOL, Del Global, and Techniclone stocks.

Unless specifically admitted in their Answer, Respondents Auerbach, Monte, George, Drake, and Zakar denied the allegations made in the Statement of Claim and asserted the following defenses:

- Failure to state a claim for which relief can be granted.
- Any losses suffered by Claimants are the result of market losses and they are not entitled to recovery thereof.
- The Claimants were sophisticated investors.
- Claimants failed to use due diligence with respect to the transactions and acts complained of and, accordingly, are barred from asserting or recovering for any such transactions or acts.
- Alleged losses of Claimants were proximately caused by their own conduct or negligence in relation to the transactions complained of, and, therefore Claimants are precluded from recovery herein.
- Damages, if any, were caused or contributed to by persons, conditions or events beyond the control of Respondents and they are not liable therefore.
- Claimants authorized and directed the execution of all transactions in their accounts.
- Respondents acted in good faith and exercised at least that degree of care, diligence and skill which ordinarily prudent persons would exercise in similar circumstances and like positions.
- Claimants assumed the risk.
- Failure to establish a cognizable claim under Section 10(b) or Rule 10b-5.
- Failure to establish a fiduciary relationship.
- Failure to state a claim for unsuitability.
- Claimants ratified the transactions.
- Claimants are not entitled to punitive damages as a matter of law.
- Claimants are not entitled to attorney's fees as a matter of law.
- Failure to state a claim for fraud.
- Failure to state a claim for negligence.

Unless specifically admitted in its Answer, Respondent Ladenburg denied the allegations made in the Statement of Claim and asserted the following defenses:

- Failure to state a claim upon which relief may be granted.
- Claimants authorized the transactions.
- Ladenburg provided appropriate supervision.
- Transactions in Claimants' accounts were suitable.
- Ladenburg did not act improperly in Claimants' accounts.
- Claimants initiated, accepted, and ratified the purchases of securities for their accounts and are now estopped from maintaining the claims through the doctrines of laches, ratification, waiver, and consent.
- Ladenburg acted, to the best of its knowledge and belief, within all applicable laws, rules, and regulations.
- Claimants failed to mitigate.
- Claimants did not reasonably rely to their detriment on any actions or inaction legally attributable to Ladenburg.
- Ladenburg discharged its responsibilities in a professional and ethical manner, in good faith, and all actions were well within the parameters of accepted brokerage procedure and all exchange and governmental regulations.

Unless specifically admitted in its Answer, Respondent Aegon denied the allegations made in the Statement of Claim and asserted the following defenses:

- Claims are barred by the appropriate statute of limitations.
- Claimants failed to mitigate.
- Claimants ratified all trades or are otherwise estopped from raising any claim.
- Aegon cannot be held responsible for the actions of others who are unaffiliated with it.
- Contributory Negligence.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$250,000.00
Punitive Damages	\$250,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	Any relief the panel deems appropriate.

Respondents Auerbach, Monte, George, Drake, and Zakar requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	Dismissal of claims.

Should the panel find against any of Respondents, the Award be specifically apportioned among the Respondents.

Respondents Monte, George, Drake, and Zakar

Other Monetary/Non-Monetary Relief if any:

Expungement of CRD record.

Respondent Ladenburg requested:

Attorneys' Fees

unspecified

Other Costs

unspecified

Other Monetary/Non-Monetary Relief if any:

Dismissal of claims.

Respondent Aegon requested:

Other Monetary/Non-Monetary Relief if any:

Dismissal of claims.

OTHER ISSUES CONSIDERED AND DECIDED

Neither Par Trade Securities nor Saperstein Financial are members of NASD. As a result, the panel did not adjudicate the claims asserted against these Respondents.

On April 29, 2002, NASD received notice of settlement between Ladenburg, Thalmann & Company, Inc. and Claimants. Consequently, the claims asserted against this Respondent were not adjudicated.

On April 19, 2002, NASD received notice of settlement between Aegon USA Securities and Claimants. Consequently, the claims asserted against this Respondent were not adjudicated.

In an order dated May 21, 2002 the Panel denied the Joint Motion to Dismiss and for More Definite Statement filed by Respondents Drake and Monte.

On July 09, 2002, NASD received notice that Respondent Robert Drake had filed a Chapter 13 Bankruptcy Petition on March 23, 2002. As a consequence, this arbitration is stayed as to Respondent Robert Drake.

On July 23, 2002, NASD received notice of partial withdrawal of claims from Claimants. The following claims are marked as withdrawn with prejudice:

- Geoffrey Feinblatt, individually and as authorized agent for Alex Brown LLC FBO Custodian for Geoffrey Feinblatt IRA
- Aaron Feinblatt, individually and as authorized agent for Alex Brown LLC FBO Custodian for Aaron Feinblatt IRA

On December 03, 2002, NASD received notice of settlement between Respondents John Zakar and Mark George and the remaining Claimants.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators the "Panel" determined that Respondent Frank Monte 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 said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Auerbach, Pollack & Richardson and Frank Monte did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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. Any and all claims asserted by Alfred Feinblatt, individually and as trustee of the A. J. Feinblatt Trust, authorized agent for the Alex Brown LLC FBO Custodian for A.J. Feinblatt IRA, and as authorized agent for the Wooddale Chiropractic Clinic, Ltd. and Donna M. Feinblatt, individually and as trustee of the D. M. Feinblatt Turst, and as authorized agent for the Alex brown LLC FBO Custodian FBO D. M. Feinblatt IRA against Auerbach, Pollack & Richardson and Frank Monte are denied.
2. The panel recommends the expungement of Respondents Mark George and John Zakar's registration records maintained by the NASD Central Registration Depository ("CRD") of all reference to the above captioned complaint with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Mark George and John Zakar must obtain confirmation from a court of competent jurisdiction before the NASD will execute the expungement directive.
3. The panel denied Frank Monte's expungement request.
4. Parties shall bear their own costs, including attorney's fees.
5. 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, 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 firms that employed the associated person at the time of the events giving rise to the dispute. Auerbach, Pollack & Richardson, Aegon USA Securities, Inc., and Landenburg, Thalmann & Co., Inc. are parties.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$2,500.00</u>
Total	= \$4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

Claimants requested postponement of the May 07 - 10 2002 hearing dates due to discovery issues. The panel waived the postponement fee.

Respondents Auerback and Monte each requested postponement of the October 29 - 28, 2002 hearing dates.

Adjournment fee	= \$ 1,125.00
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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:

One (1) Pre-hearing session with a single arbitrator at \$450.00	= \$ 450.00
Pre-hearing conference: July 16, 2002 1 session	

Four (4) Pre-hearing sessions with Panel at \$1,125.00	= \$4,500.00
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Pre-hearing conferences:	October 22, 2001	1 session
	May 03, 2002	1 session
	July 17, 2002	1 session
	October 28, 2002	1 session

Two (2) Hearing sessions at \$1,125.00	= \$2,250.00
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<u>Hearing Dates:</u>	<u>December 05, 2002</u>	<u>2 sessions</u>
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Total Forum Fees	= \$7,200.00
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1. The Panel has assessed \$2,400.00 of the forum fees jointly and severally to Alfred Feinblatt, individually and as trustee of the A. J. Feinblatt Trust, authorized agent for the Alex Brown LLC FBO Custodian for A.J. Feinblatt IRA, and as authorized agent for the Wooddale Chiropractic Clinic, Ltd. and Donna M. Feinblatt, individually and as trustee of the D. M.

Feinblatt Turst, and as authorized agent for the Alex brown LLC FBO Custodian FBO D. M. Feinblatt IRA.

2. The Panel has assessed \$2,400.00 of the forum fees to Auerbach, Pollack & Richardson.
3. The Panel has assessed \$2,400.00 of the forum fees Frank Monte.

FEE SUMMARY

1. Claimants Alfred Feinblatt, individually and as trustee of the A. J. Feinblatt Trust, authorized agent for the Alex Brown LLC FBO Custodian for A.J. Feinblatt IRA, and as authorized agent for the Wooddale Chiropractic Clinic, Ltd. and Donna M. Feinblatt, individually and as trustee of the D. M. Feinblatt Turst, and as authorized agent for the Alex Brown LLC FBO Custodian FBO D. M. Feinblatt IRA are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$2,400.00
<u>Total Fees</u>	= \$2,700.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,275.00

2. Respondent Auerbach, Pollack & Richardson is solely liable for:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 2,400.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 1,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,500.00

3. Aegon USA Securities, Inc. is solely liable for:

Member Fees	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 1,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,100.00

4. Landenburg, Thalmann & Co., Inc. is solely liable for:

Member Fees	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 5,200.00
Refund Due from NASD Dispute Resolution, Inc.	= \$ 600.00

5. Respondent Frank Monte is solely liable for:

Forum Fee	= \$ 2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,400.00

6. Respondents Auerbach, Pollack & Richardson and Frank Monte are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 1,125.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,125.00

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

ARBITRATION PANEL

Donald Schultz	-	Public Arbitrator, Presiding Chairperson
Rev. David J. Langseth	-	Public Arbitrator
Robert B. Schmidt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Donald Schultz

01/15/03

Donald Schultz

Signature Date

Public Arbitrator, Presiding Chairperson

/s/ David J. Langseth

01/16/03

Rev. David J. Langseth

Signature Date

Public Arbitrator

Robert B. Schmidt

Signature Date

Non-Public Arbitrator

01/16/03

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

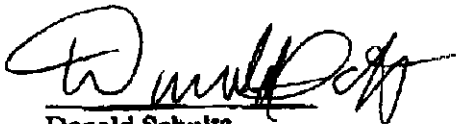
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ARBITRATION PANEL

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Rev. David J. Langseth	-	Public Arbitrator
Robert B. Schmidt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Donald Schultz
Public Arbitrator, Presiding Chairperson

1-15-03
Signature Date

Rev. David J. Langseth
Public Arbitrator

Signature Date

Robert B. Schmidt
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.
Arbitration No. 00-03876
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ARBITRATION PANEL

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Rev. David J. Langseth	-	Public Arbitrator
Robert B. Schmidt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Donald Schultz
Public Arbitrator, Presiding Chairperson

Signature Date



Rev. David J. Langseth
Public Arbitrator

01/16/03

Signature Date

Robert B. Schmidt
Non-Public Arbitrator

Signature Date

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