

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

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In the Matter of the Arbitration Between

Name of Claimant

Richard E. Miller

Case No. 00-04066

Name of Respondents

Emmett A. Larkin Company, Inc.  
Paul N. Lehnert

Hearing Site: Pittsburgh, Pennsylvania

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**REPRESENTATION OF PARTIES**

Claimant, Richard E. Miller, hereinafter referred to as "Claimant": Stanley P. DeGory, Esq., Bonya Gazza & DeGory, LLP, Indiana PA.

Respondent, Emmett A. Larkin Company, Inc. ("Emmett A. Larkin"), hereinafter referred to as "Respondent Emmett A. Larkin": Melvin L. Peterson, Esq., Emmett A. Larkin Company, Inc., San Francisco CA.

Respondent, Paul N. Lehnert ("Lehnert"), hereinafter referred to as "Respondent Lehnert": George J. Steffish, III, Esq., Butler PA.

**CASE INFORMATION**

Statement of Claim filed on: September 15, 2000

Claimant signed the Uniform Submission Agreement: September 15, 2000

Statement of Answer filed by Respondent Emmett A. Larkin on: December 6, 2000

Respondent Emmett A. Larkin signed the Uniform Submission Agreement: November 28, 2000

Statement of Answer filed by Respondent Lehnert on: December 4, 2000

Respondent Lehnert signed the Uniform Submission Agreement: November 24, 2000

### **CASE SUMMARY**

Claimant asserted the following causes of action, among others: failure to sell as instructed by Claimant; unauthorized trading; intentional misconduct; and, negligence. The causes of action relate to transactions involving Echostar Communications, Gilat Satellite Networks, Razorfish, Sonicwall, Unify, and I2 Technologies stock.

Unless specifically admitted in its Answer, Respondent Emmett A. Larkin denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's failure to timely object to any of the transactions of which he complains constitutes a ratification of these transactions and a waiver or estoppel of Claimant's right to any recovery sought in the Statement of Claim; and, any losses Claimant may have suffered are the result of market fluctuations.

Unless specifically admitted in its Answer, Respondent Lehnert denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's failure to timely object to any of the transactions of which he complains constitutes a ratification of these transactions and a waiver or estoppel of Claimant's right to any recovery sought in the Statement of Claim; and, any losses Claimant may have suffered are the result of market fluctuations.

### **RELIEF REQUESTED**

At the hearing, Claimant amended the amount requested as Compensatory Damages to \$87,287.50 plus \$18,500.00 or, in the alternative, \$113,248.17 plus \$18,500.00. Claimant also requested interest on the amount awarded, attorneys' fees and costs.

Respondent Emmett A. Larkin requested dismissal of this matter and reimbursement of all fees and charges assessed.

Respondent Lehnert requested dismissal of this matter and reimbursement of all fees and charges assessed.

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

The parties have agreed that the Award in this matter may be executed in counterpart or that a handwritten, signed Award may be entered.

Claimant's Motion to have an audio tape admitted into evidence was denied.

Claimant amended his claims for damages requested at the hearing.

### **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. Respondent Lehnert is liable to Claimant and shall pay to Claimant the sum of \$56,187.50 in compensatory damages;
2. That Respondent Lehnert is liable to Claimant and shall pay to Claimant simple interest at the rate of 6% on the amount awarded from April 10, 2000 until the date of payment of the amount awarded;
3. That Claimant's claim against Respondent Emmett A. Larkin is denied in its entirety;
4. That Respondent Lehnert is liable and shall reimburse Claimant for the claim filing fees of \$300;
5. That the Panel's assessment of forum fees is addressed below; and
6. That any and all claims not specifically addressed herein are denied in their entirety.

### **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
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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
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

#### **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:

Two (2) Pre-hearing sessions with Panel x \$1,125		= \$2,250
Pre-hearing conferences: September 10, 2001	1 session	
October 24, 2001	1 session	

Two (2) Hearing sessions x \$1,125		= \$2,250
Hearing Date: November 14, 2001	2 sessions	

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Total Forum Fees		= \$4,500
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The Panel has assessed \$4,500 of the forum fees to Respondent Lehnert.

**Fee Summary**

Claimant is assessed the following fees:

Initial Filing Fee	= \$ 300
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Total Fees	= \$ 300
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Less payments	= \$ 1,425
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Refund from NASD Dispute Resolution, Inc.	= \$ 1,125
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Respondent Emmett A. Larkin is assessed the following fees:

Member Fees	= \$ 4,600
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Total Fees	= \$ 4,600
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Less payments	= \$ 4,600
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Balance Due NASD Dispute Resolution, Inc.	= \$ 00
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Respondent Lehnert is assessed the following fees:

Forum Fees	= \$ 4,500
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Total Fees	= \$ 4,500
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Less payments	= \$ 00
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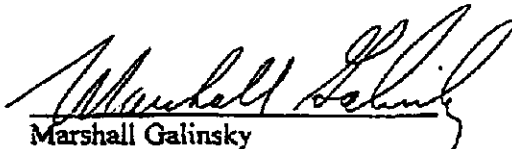
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,500
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All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Marshall Galinsky	-	Public Arbitrator, Presiding Chairman
Howard Averbach	-	Public Arbitrator, Panelist
Dennis Shannon	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

  
Marshall Galinsky  
Public Arbitrator, Presiding Chairman

12/19/01  
Signature Date

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Howard Averbach  
Public Arbitrator, Panelist

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Signature Date

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Dennis Shannon  
Non-Public Arbitrator, Panelist

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Signature Date

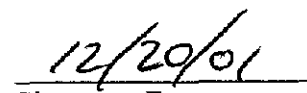
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**Concurring Arbitrators' Signatures**

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Marshall Galinsky  
Public Arbitrator, Presiding Chairman

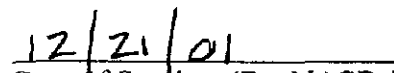
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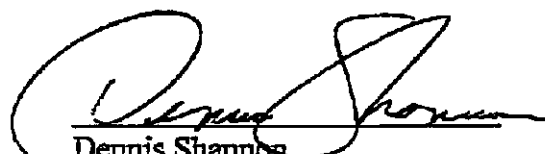
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Dennis Shannon  
Non-Public Arbitrator, Panelist

12/20/01  
Signature Date

12/21/01  
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