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

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In the Matter of the Arbitration Between:

**Leslie S. Radwany, Jr., Revocable Trust, U/A, Dated February 4, 1997,**  
Claimant

Vs.

Case Number: 00-04455

**Rise, Inc.,**  
**Berndt & Associates, Inc.,**  
**Frederick Edward Berndt, and**  
**Frederick Carl Berndt**  
Respondents.

Hearing Site: Cleveland, Ohio

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**REPRESENTATION OF PARTIES**

Claimant Leslie S. Radwany, Jr., Revocable Trust, U/A, Dated February 4, 1997 ("Radwany"), was represented by Jeffrey L. Nischwitz, Esquire, of Nischwitz, Pembridge & Chriszt Co., L.P.A., Cleveland, Ohio.

Respondent Rise, Inc. ("Rise"), was represented by Schuyler J. Olt, Esquire, of Pedley, Zielke, Gordinier & Pence, PLLC, Louisville, Kentucky.

Respondents Berndt & Associates, Inc. ("B & A"), Frederick Edward Berndt ("F.E. Berndt") and Frederick Carl Berndt ("F.C. Berndt"), were represented by Karl E. May, Esquire, of Doepken, Keevican & Weiss, Attorneys at Law, Cleveland, Ohio.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 6, 2000.

Leslie S. Radwany, Jr., trustee of the Leslie S. Radwany, Jr., Revocable Trust, signed the Uniform Submission on September 22, 2000.

B & A, F.E. Berndt and F.C. Berndt filed a joint Statement of Answer on or about November 30, 2000.

B & A, F.E. Berndt and F.C. Berndt each signed the Uniform Submission Agreement on November 27, 2000. F.E. Berndt signed on his own behalf and on behalf of B & A, as its President.

Rise filed a Statement of Answer on or about December 1, 2000. Gregory W. Smith, President of Rise, signed the Uniform Submission Agreement on its behalf on November 28, 2000.

### **CASE SUMMARY**

Radwany asserted the following causes of action: unsuitability, unauthorized margin trading, churning, failure to supervise, breach of fiduciary duty, fraud, and Form ADV violations. These causes of action related to transactions involving common stock in the following company, as well as others: mp3.com.

Unless stated otherwise in their joint Statement of Answer, B & A, F.E. Berndt and F.C. Berndt denied the allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted, waiver, estoppel, ratification, laches, violation of the applicable statute of limitations and contributory negligence.

Unless stated otherwise in its Statement of Answer, Rise denied the allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief can be granted, contributory negligence, estoppel, laches and/or violation of the applicable statutes of limitations.

### **RELIEF REQUESTED**

Radwany requested:

Compensatory Damages	\$200,000.00
Punitive Damages	\$100,000.00
Attorneys' Fees	not specified
Interest	not specified
Costs	not specified

B & A, F.E. Berndt and F.C. Berndt requested that the claims against them be dismissed in their entirety, and that they be awarded attorney's fees and costs.

Rise requested that the claims against it be dismissed in their entirety, and that it be awarded attorneys' fees.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the undersigned Panel finds in full and final resolution of the issues submitted for determination as follows:

1. Respondent Rise, Inc., is solely liable for, and shall pay to Claimant Leslie S. Radwany, Jr., Revocable Trust, U/A, Dated February 4, 1997, the sum of \$28,000.00 (Twenty-eight Thousand Dollars and No Cents) in compensatory damages.
2. Respondents Berndt & Associates, Inc., and Frederick Edward Berndt, are jointly and severally liable for, and shall pay to Claimant Leslie S. Radwany, Jr., Revocable Trust, U/A, Dated February 4, 1997, the sum of \$14,000.00 (Fourteen Thousand Dollars and No Cents) in compensatory damages.
3. Respondent Frederick Carl Berndt is solely liable for, and shall pay to Claimant Leslie S. Radwany, Jr., Revocable Trust, U/A, Dated February 4, 1997, the sum of \$14,000.00 (Fourteen Thousand Dollars and No Cents) in compensatory damages.
4. Except as otherwise specified herein, each party shall bear its own costs and attorneys' 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 the following non-refundable filing fee:

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 fees	= \$ 600.00
Hearing process fee	= \$ 2,500.00

### **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 the panel x \$1,125 = \$ 2,250.00

Pre-hearing conferences: April 24, 2001 1 session  
January 8, 2002 1 session

Eight (8) Hearing sessions x \$1,125 = \$ 9,000.00

Hearing Dates: May 20, 2002 2 sessions  
May 21, 2002 2 sessions  
May 22, 2002 2 sessions  
June 10, 2002 2 sessions

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Total Forum Fees = \$11,250.00

The Panel has assessed the forum fees incurred in this arbitration as follows:

One half (\$5,625.00) solely to Claimant Leslie S. Radwany, Jr., Revocable Trust, U/A, Dated February 4, 1997;

One fourth (\$2,812.50) solely to Respondent Rise, Inc.; and,

One fourth (\$2,812.50) jointly and severally to Respondents Berndt & Associates, Inc., Frederick Edward Berndt and Frederick Carl Berndt.

### **Fee Summary**

1. Claimant Leslie S. Radwany, Jr., Revocable Trust, U/A, Dated February 4, 1997, is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,625.00
Total Fees	= \$ 5,925.00
<u>Less payments</u>	= \$ 1,425.00
Balance due to NASD Dispute Resolution, Inc.	= \$ 4,500.00

2. Respondent Rise, Inc., is solely liable for:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 2,812.50
Total Fees	= \$ 7,412.50
<u>Less payments</u>	= \$ 4,600.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 2,812.50

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3. Respondents Berndt & Associates, Inc., Frederick Edward Berndt and Frederick Carl Berndt are jointly and severally liable for:

Forum Fees	= \$ 2,812.50
Total Fees	= \$ 2,812.50
Less payments	= \$ 0.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 2,812.50

**ARBITRATION PANEL***Murray S. Marsh*

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*Public Arbitrator, Chairperson**Thaddeus J. Shalek*

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*Public Arbitrator**Daniel J. Weinberger, Esq.*

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*Non-Public Arbitrator**Murray S. Marsh**6-26-02**Murray S. Marsh*

Signature Date

Public Arbitrator

*Thaddeus J. Shalek*

Signature Date

Public Arbitrator

*Daniel J. Weinberger, Esq.*

Signature Date

Non-Public Arbitrator

Date of Service

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3. Respondents Berndt & Associates, Inc., Frederick Edward Berndt and Frederick Carl Berndt are jointly and severally liable for:


Forum Fees	= \$ 2,812.50
Total Fees	= \$ 2,812.50
Less payments	= \$ 0.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 2,812.50

#### ARBITRATION PANEL

Murray S. Marsh	-	Public Arbitrator, Chairperson
Thaddeus J. Shalek	-	Public Arbitrator
Daniel J. Weinberger, Esq.	-	Non-Public Arbitrator

Murray S. Marsh  
Public Arbitrator

Signature Date

  
Thaddeus J. Shalek  
Public Arbitrator

6/26/02  
Signature Date

Daniel J. Weinberger, Esq.  
Non-Public Arbitrator

Signature Date

Date of Service

NASD Dispute Resolution, Inc.  
Arbitration Case #: 00-04455  
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3. Respondents Berndt & Associates, Inc., Frederick Edward Berndt and Frederick Carl Berndt are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,812.50
<u>Total Fees</u>	= \$ 2,812.50
<u>Less payments</u>	= \$ 0.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 2,812.50

**ARBITRATION PANEL**

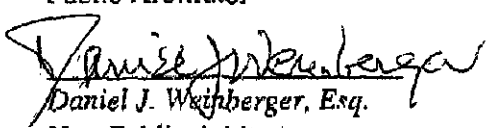
<i>Murray S. Marsh</i>	-	<i>Public Arbitrator, Chairperson</i>
<i>Thaddeus J. Shalek</i>	-	<i>Public Arbitrator</i>
<i>Daniel J. Weinberger, Esq.</i>	-	<i>Non-Public Arbitrator</i>

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*Murray S. Marsh*  
Public Arbitrator

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Signature Date

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*Thaddeus J. Shalek*  
Public Arbitrator

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

  
*Daniel J. Weinberger, Esq.*  
Non-Public Arbitrator

6-26-02  
Signature Date

\_\_\_\_\_  
Date of Service