

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

David Caplan, Power of Attorney for Maria B. Caplan, AristaQuest, Inc., and AristaData, Inc.,
(Claimants) vs. Merrill Lynch Pierce Fenner & Smith, (Respondent)

Case Number: 00-04531

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, David Caplan, Power of Attorney for Maria B. Caplan ("Caplan"), AristaQuest, Inc. ("AristaQuest"), and AristaData, Inc. ("AristaData"), hereinafter collectively referred to as "Claimants": Timothy J. Dennin, PC, Attorney at Law, New York, NY.

Respondent, Merrill Lynch Pierce Fenner & Smith, hereinafter referred to as "Respondent": Howard G. Meyers, III, Esq., Meyers, Meyers & Tonachio, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: October 11, 2000.

Claimants' Answer to Respondent's Counterclaim filed on or about: March 16, 2001.

David Caplan, as Power of Attorney for Claimant Caplan and as President of Claimants AristaQuest and AristaData, signed the Uniform Submission Agreement: October 11, 2000.

Statement of Answer and Counterclaim filed by Respondent on or about: January 9, 2001.

Respondent signed the Uniform Submission Agreement: January 9, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the anti-fraud provisions of the Securities Exchange Act of 1934, SEC Rule 10b-5, common law fraud, applicable Blue Sky laws and regulations promulgated thereunder; negligence; breach of contract; breach of fiduciary duty; respondeat superior; failure to supervise; suitability and omission of material facts. The causes of action relate to Respondent's alleged failure to timely inform Claimants of its plan to transfer Claimants' accounts maintained in the Hedge Fund/Prime Broker area to a retail office which would result in substantial increase in margin requirements.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: failure to allege facts sufficient to state a cause of action; any damages sustained by Claimants are the result of Claimants' own acts or omissions; ratification; and failure to mitigate damages.

In its Counterclaim, Respondents asserted the following causes of action: repayment of deficit balance.

Unless specifically admitted in its Answer, Claimant denied the allegations made in Respondent's Counterclaim and asserted the following defenses: Respondent is barred from recovering deficit balance since it was created through Respondent's inappropriate and illegal acts.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$1,000,000.00, plus interest; punitive damages in an amount to be determined by the Panel; recovery of all costs, expenses and disbursements of these proceedings, including attorneys' fees, expenses, accountants and expert fees; and other such relief as the Panel deems just and proper.

Respondent requested dismissal of Claimants' claims in their entirety; and recovery of all costs, expenses and disbursements of these proceedings, including attorneys' fees.

In its Counterclaim, Respondent requested compensatory damages in the amount of \$129,726.36, plus interest thereon, from September 29, 2000.

Claimants requested that Respondent's counterclaim be denied in its entirety.

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.

In their post-hearing submissions, Claimants requested a total of \$1,871,876 in damages, including interest. Respondent requested a total of \$200,640.57 in damages, including interest, costs and expert fees.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable for and shall pay to Claimants compensatory damages in the sum of \$53,196.00, plus interest in the sum of \$8,777.34, representing interest accrued from August 1, 2000 to June 1, 2002.
2. Claimants be and hereby are jointly and severally liable for and shall pay to Respondent compensatory damages in the sum of \$22,000.00, plus interest in the sum of \$3,547.50, representing interest accrued from August 16, 2000 to June 1, 2002.
3. Claimants' request for punitive damages is denied.
4. All other request 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	= \$ 500.00
Counter claim filing fee	= \$ 1,000.00

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 persons at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

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 \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: May 8, 2001	1 session
January 23, 2002	1 session
Twenty-one (21) Hearing sessions x \$1,200.00	= \$25,200.00
Hearing Dates: May 16, 2002	2 sessions
May 17, 2002	2 sessions
May 20, 2002	2 sessions
May 21, 2002	2 sessions
May 22, 2002	2 sessions
May 23, 2002	2 sessions
June 3, 2002	2 sessions
June 4, 2002	1 session
June 5, 2002	1 session
June 10, 2002	2 sessions
June 11, 2002	2 sessions
June 12, 2002	1 session
Total Forum Fees	= \$27,600.00

1. The Panel has assessed \$13,800.00 of the forum fees against Claimants.
2. The Panel has assessed \$13,800.00 of the forum fees against Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimants requested 9 copies of hearing tapes @ \$15.00 = \$135.00
2. Respondent requested 5 copies of hearing tapes @ \$15.00 = \$75.00

Fee Summary

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

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 13,800.00
<u>Administrative Costs</u>	= \$ 135.00
Total Fees	= \$ 14,435.00
<u>Less payments</u>	= \$ 1,890.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 12,545.00

2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 7,600.00
Forum Fees	= \$ 13,800.00
<u>Administrative Costs</u>	= \$ 75.00
Total Fees	= \$ 22,475.00
<u>Less payments</u>	= \$ 9,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 12,675.00


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

ARBITRATION PANEL

Joseph F. Wagner, Esq.	-	Public Arbitrator, Presiding Chair
Sandra Black-Stubbs	-	Public Arbitrator
Peter M. Pfau	-	Industry Arbitrator

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.



Joseph F. Wagner, Esq.
Public Arbitrator, Presiding Chair

6/27/02

Signature Date

Sandra Black-Stubbs
Public Arbitrator

Signature Date

Peter M. Pfau
Industry Arbitrator

Signature Date

July 11, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Joseph F. Wagner, Esq.	-	Public Arbitrator, Presiding Chair
Sandra Black-Stubbs	-	Public Arbitrator
Peter M. Pfau	-	Industry Arbitrator

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Joseph F. Wagner, Esq.
Public Arbitrator, Presiding Chair



Sandra Black-Stubbs
Public Arbitrator

Signature Date

6/29/02

Signature Date

Peter M. Pfau
Industry Arbitrator

Signature Date

July 11, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

Joseph F. Wagner, Esq.	-	Public Arbitrator, Presiding Chair
Sandra Black-Stubbs	-	Public Arbitrator
Peter M. Pfau	-	Industry Arbitrator

Concurring Arbitrators' Signatures

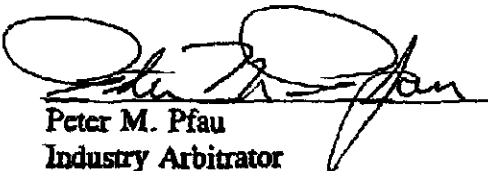
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Joseph F. Wagner, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Sandra Black-Stubbs
Public Arbitrator

Signature Date



Peter M. Pfau
Industry Arbitrator



Signature Date

July 11, 2002
Date of Service (For NASD office use only)