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

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In the Matter of the Arbitration Between:

Name of Claimant:

Muriel Siebert & Co., Inc.

Case No: 01-187

Name of Respondent:

Robert Frankl

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Muriel Siebert & Co., Inc. ("MSC"), hereinafter referred to as "Claimant": Michael S. Press, Esq., New York, New York.

For Robert Frankl ("Frankl"), hereinafter referred to as "Respondent": Marc S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about January 16, 2001.

Claimant MSC's Uniform Submission Agreement was signed on January 16, 2001, by Mitchell Cohen, Executive Vice President, MSC.

The Uniform Submission Agreement of Respondent Frankl was signed on November 5, 2001.

Respondent Frankl filed a Statement of Answer on or about March 19, 2001.

**CASE SUMMARY**

Claimant brought this arbitration based on the principles of contribution and indemnity asserting substantial financial loss in connection with a settlement reached between Claimant and a public customer on account of the alleged intentional wrongdoing of Respondent Frankl, Claimant's former employee.

Respondent Frankl denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$232,500, plus additional out-of-pocket expenses necessarily incurred in connection with Respondent's alleged wrongdoing, including reasonable attorneys' fees.

Respondent Frankl requested that all relief sought by Claimant MSC be denied.

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

1. 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 either case, the parties have agreed to receive conformed copies of the Award, while the original remains on file with NASD Dispute Resolution, Inc. ("NASDR").

### **FINDING OF FACT**

On the evidence presented, the undersigned arbitrators (the "Panel"), have found that, during the relevant time period (May 1996 to December 2000), Claimant MSC significantly failed in their responsibility to provide adequate supervision and compliance standards to their Florida operations. This resulted in numerous violations by employees as well as management personnel, not only of NASD rules and state/federal securities regulations, but also of their own internal policies and procedures. The sole reliance upon a telephone routing system, without adequate means of checking state registrations, coupled with an apparent lack of communication, resulted in a systemic problem of numerous brokers selling securities in states in which they were not licensed to do so.

### **AWARD**

After considering the pleadings, the evidence presented at the Hearing, and in accordance with the Panel's above-referenced Finding of Fact, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Frankl is hereby found liable and shall pay to Claimant MSC Forty Thousand Dollars and No Cents (\$40,000.00) in compensatory damages. The award of such damages is granted to Claimant based upon their assertion of contribution against Respondent Frankl.
2. The Panel finds no liability on Claimant's assertion of indemnity against Respondent Frankl.

3. The Panel ruled upon the Respondent's Motion to Vacate Order of Attachment, finding that Claimant MSC is to notify the New York Supreme Court and Morgan Stanley Dean Witter, Inc. of the award granted in connection with this arbitration (the "Award"), within ten (10) business days of receipt of such Award and request from the New York Supreme Court a Vacating Order of Attachment of Respondent's funds in excess of the amount of the above award, \$40,000.00.
4. The Panel ruled upon the Respondent's Motion for Release of Account, ordering Claimant MSC to immediately release any remaining funds to Respondent Frankl in Muriel Siebert Account #ONI-201910.
5. The Panel denied both Claimant's and Respondent's Motions for Attorney's Fees, and denied Respondent's Motion for Sanctions and Disciplinary Referral.
6. Any and all requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASDR will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
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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 that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Processing Fee	= \$2,500.00

#### **Adjournment Fees**

There were no adjournments requested during these proceedings:

#### **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 one or more arbitrator, including a pre-hearing conference with one or more arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-Hearing Sessions with the Panel x \$1,125.00	= \$2,250.00
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Pre-Hearing conference dates:	July 31, 2001	1 session
	October 1, 2001	1 session

Ten (10) Hearing Sessions with the Panel x \$1,125.00 = \$11,250.00

Hearing Dates:	November 5, 2001	2 sessions
	November 6, 2001	2 sessions
	November 7, 2001	2 sessions
	December 11, 2001	2 sessions
	December 12, 2001	2 sessions

Total Forum Fees = \$13,500.00

The Panel has assessed \$6,750.00 of the forum fees to Claimant MSC.

The Panel has assessed \$6,750.00 of the forum fees to Respondent Frankl.

**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.

There were no administrative costs incurred during these proceedings.

**FEE SUMMARY**

Claimant be and hereby is solely liable for:

Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$6,750.00
Total Fees	= \$12,350.00
Less payments	= \$6,725.00
Balance Due NASD Dispute Resolution, Inc.	= \$5,625.00

Respondent Frankl be and hereby is solely liable for:

Forum Fees	= \$6,750.00
Total Fees	= \$6,750.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$6,750.00

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

**CONCURRING ARBITRATORS**

Bonnie A. Pearce	-	Public Arbitrator, Presiding Chair
Frank J. Tepper, Esq.	-	Public Arbitrator
Jay L. Valinsky, Esq.	-	Industry Arbitrator

/s/  
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Bonnie A. Pearce  
Public Arbitrator, Presiding Chair

January 22, 2002  
\_\_\_\_\_  
Signature Date

/s/  
\_\_\_\_\_  
Frank J. Tepper, Esq.  
Public Arbitrator

January 22, 2002  
\_\_\_\_\_  
Signature Date

/s/  
\_\_\_\_\_  
Jay L. Valinsky  
Industry Arbitrator

January 22, 2002  
\_\_\_\_\_  
Signature Date

January 23, 2002  
\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)



**CONCURRING ARBITRATORS**

Bonnie A. Pearce	-	Public Arbitrator, Presiding Chair
Frank J. Tepper, Esq.	-	Public Arbitrator
Jay L. Valinsky, Esq.	-	Industry Arbitrator

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Bonnie A. Pearce  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Frank J. Tepper, Esq.  
Public Arbitrator

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1-22-02  
Signature Date

\_\_\_\_\_  
Jay L. Valinsky  
Industry Arbitrator

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Signature Date

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2002  
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Bonnie A. Pearce  
Frank J. Tepper, Esq.  
Jay L. Valinsky, Esq.

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Industry Arbitrator

Bonnie A. Pearce  
Public Arbitrator, Presiding Chair

Signature Date

Frank J. Tepper, Esq.  
Public Arbitrator

Signature Date

Jay L. Valinsky  
Industry Arbitrator

Signature Date

2002

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