

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Ralph Rubenstein, JANT Foundation, Rubenstein Family Revocable Trust, and I. & L. Rubenstein Family Foundation, Claimants v. Merrill Lynch, Pierce, Fenner, & Smith Inc., Respondent

Case Number: 01-00613

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Jeffrey K. Riffer, Esq.  
Jeffer, Mangels, Butler & Marmaro, LLP  
Los Angeles, California

For Respondent:

Peter Brown Dolan, Esq.  
Law Office of Peter Brown Dolan  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: February 5, 2001

Claimants' Uniform Submission Agreements each signed: January 21, 2001

Statement of Answer filed by Respondent: April 2, 2001

Respondent's Uniform Submission Agreement signed: March 16, 2001

**CASE SUMMARY**

Claimants alleged breach of contract, breach of fiduciary duty, churning, unsuitability, negligence, professional malpractice, misrepresentation, fraud, unfair business practices, failure to supervise, and violation of state and federal securities laws and NASD Rules. Claimants' allegations concerned the sale of Ha-Lo stock and subsequent transactions in unspecified securities, through Respondent's Personal Investment Advisory Program, Claimants' day trading accounts, and Claimants' other Merrill Lynch accounts.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

**RELIEF REQUESTED**

Claimants requested unspecified compensatory damages, pre-judgment interest, and costs.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and reimbursement of costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

**AWARD**

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

- 1) Respondent is liable to and shall pay Claimant Ralph Rubenstein the sum of \$896,400.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant JANT Foundation the sum of \$36,000.00 in compensatory damages.
- 3) Respondent is liable to and shall pay Claimant Rubenstein Family Revocable Trust the sum of \$837,000.00 in compensatory damages.
- 4) Respondent is liable to and shall pay Claimant I. & L. Rubenstein Family Foundation the sum of \$30,600.00 in compensatory damages.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 250.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner, & Smith Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,200.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 3,800.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

January 27-30, 2003, adjournment requested by Claimants = \$ 1,000.00

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences: February 12, 2002	1 session
June 26, 2002	1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$ 2,000.00
Pre-hearing conferences: July 24, 2001	1 session
October 24, 2002	1 session

Eighteen (18) Hearing sessions @ \$1,000.00/session = \$18,000.00

Hearings:	October 28, 2002	2 sessions
	October 29, 2002	2 sessions
	October 30, 2002	2 sessions
	October 31, 2002	2 sessions
	June 16, 2003	2 sessions
	June 17, 2003	2 sessions
	June 18, 2003	2 sessions
	June 19, 2003	2 sessions
	July 9, 2003	2 sessions

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**Total Forum Fees** = \$20,900.00

The Panel assessed the entire balance of the forum fees in the amount of \$20,900.00 to Respondent.

**Fee Summary**

1. Claimants are charged jointly and severally is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$ 1,000.00
Total Fees	= \$ 1,250.00
<u>Less payments</u>	= \$( 1,250.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 3,800.00
<u>Forum Fees</u>	= \$20,900.00
Total Fees	= \$24,700.00
<u>Less payments</u>	= \$( 3,800.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 24,900.00</b>

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

**ARBITRATION PANEL**

***Thomas A. Culbertson, Esq.***

***Otis E. Hackett***

***Curtis H. Baer***

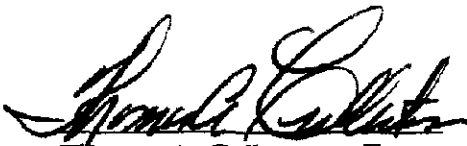
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***Public Arbitrator, Presiding Chair***

***Public Arbitrator***

***Non-Public Arbitrator***

**Concurring Arbitrators' Signatures**



Thomas A. Culbertson, Esq.  
Chair, Public Arbitrator

7/23/03  
Signature Date



Otis E. Hackett  
Public Arbitrator

7/23/03  
Signature Date



Curtis H. Baer  
Non-Public Arbitrator

7/23/03  
Signature Date

JULY 24, 2003  
Date of Service