

---

**Amended Stipulated Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimant

Arthur Struck on behalf of IRA FBO  
Arthur Struck

Case Number: 02-05962

Names of the Respondents

Sands Brothers & Co., Ltd.  
Stephen Soler

Hearing Site: Boca Raton, FL

---

Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Arthur Struck on behalf of IRA FBO Arthur Struck ("Struck") hereinafter referred to as "Claimant": Allan M. Lerner, Esq., Law Offices Allan M. Lerner, P.A., Fort Lauderdale, Florida.

For Sands Brothers & Co., Ltd. ("SBC") and Stephen Soler ("Soler"), hereinafter referred to as "Respondents": Richard A. Roth, Esq., The Roth Law Firm PLLC, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: October 4, 2002.

Claimant signed the Uniform Submission Agreement: October 3, 2002.

Statement of Answer filed by Respondents on or about: January 10, 2003.

Respondent SBC signed the Uniform Submission Agreement: January 10, 2003.

Respondent Soler did not file an executed Uniform Submission Agreement.

Counterclaim filed by Respondents on or about: January 15, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) unsuitability; 2) misrepresentation; and 3) failure to supervise. The causes of action relate to the purchase and sale of unspecified securities in Claimant's account.

Unless specifically admitted in their Statement of Answer, the Respondents denied the all of the material allegations made in the Statement of Claim and asserted, among other things, the following defenses: 1) failure to state a claim; 2) failure to mitigate damages; 3) waiver, 4) ratification and 5) estoppel.

Respondents' Counterclaim asserted a claim for breach of contract and for fraud in the inducement.

Claimant denied the claims set forth in the Counterclaim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$488,120.67 plus interest, punitive damages in an amount to be determined, attorney's fees, costs, filing fees and such other and further relief as is fair and just.

Respondents requested that all claims be dismissed and that all costs be borne by Claimant.

In their Counterclaim, Respondents requested compensatory damages of \$2,000,000.00, plus interest, costs, attorney's fees and any further relief deemed just and proper.

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

Respondent Soler did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

By Order of the Panel dated December 23, 2003, Respondents were granted leave to file a Counterclaim.

On or about September 15, 2004, Claimant's counsel advised NASD Dispute Resolution that the parties had settled the arbitration proceeding and requested cancellation of the evidentiary hearings. Also, on or about September 15, 2004, Claimant requested that NASD not release the Panel to allow Claimant and Respondents to submit a proposed Stipulated Award.

On or about October 15, 2004, the parties submitted a proposed Stipulated Award that requested an Expungement of the NASD Central Registration Depository records of Respondent Soler.

On or about November 17, 2004, the parties submitted Stipulations of Dismissal agreeing to the entry of a Stipulated Award.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the Proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Soler's public and non-public registration records maintained by NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Soler

must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

2. All claims between the parties are dismissed with prejudice.

### **FEEs**

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

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
Counterclaim filing fee	= \$2,000.00

#### **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 person at the time of the events giving rise to the dispute. Accordingly, Respondent SBC is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 3 – 6, 2004 hearing dates, adjournment requested by Respondents. The Panel assessed the adjournment fee of \$1,125.00 to Respondents.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

The Panel has assessed a three-day cancellation fee of \$300.00 as follows:

*\$150 to Respondent Sands.*

*\$150 to Respondent Soler.*

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel. No injunctive relief fees were incurred during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,200.00 for Respondents = \$2,400.00

Pre-hearing conferences: April 22, 2003 1 session

December 23, 2003 1 session

---

***The Panel has assessed \$1,200.00 of the forum fees to Respondent Sands.***

***The Panel has assessed \$1,200.00 of the forum fees to Respondent Soler.***

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<b><i>Retained Hearing Session Deposit</i></b>	
<b><i>pursuant to Rule 10332(f) of the Code</i></b>	<b><i>= \$1,125.00</i></b>
<b><i>Total Fees</i></b>	<b><i>= \$1,425.00</i></b>
<b><i>Less payments</i></b>	<b><i>= \$1,425.00</i></b>
<b><i>Balance Due NASD Dispute Resolution</i></b>	<b><i>= \$ 0.00</i></b>

Respondent Sands is solely liable for:

Member Fees	= \$5,200.00
<b><i>Three-Day Cancellation Fee</i></b>	<b><i>= \$ 150.00</i></b>
<b><i>Forum Fees</i></b>	<b><i>= \$1,200.00</i></b>
<b><i>Total Fees</i></b>	<b><i>= \$6,550.00</i></b>
<b><i>Less payments</i></b>	<b><i>= \$5,200.00</i></b>
<b><i>Balance Due NASD Dispute Resolution</i></b>	<b><i>= \$1,350.00</i></b>

Respondent Soler is solely liable for:

<b><i>Three-Day Cancellation Fee</i></b>	<b><i>= \$ 150.00</i></b>
<b><i>Forum Fees</i></b>	<b><i>= \$1,200.00</i></b>
<b><i>Total Fees</i></b>	<b><i>= \$1,350.00</i></b>
<b><i>Less payments</i></b>	<b><i>= \$ 900.00</i></b>
<b><i>Balance Due NASD Dispute Resolution</i></b>	<b><i>= \$ 450.00</i></b>

Respondents Sands and Soler are jointly and severally liable for:

Counterclaim filing fee	= \$2,000.00
<u>Adjournment Fee</u>	= <u>\$1,125.00</u>
Total Fees	= \$3,125.00
<u>Less payments</u>	= <u>\$3,125.00</u>
<b><i>Balance Due NASD Dispute Resolution</i></b>	<b>= \$ 0.00</b>

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

**ARBITRATION PANEL**

Kimberly A. Gilmour, Esq.	-	Public Arbitrator, Presiding Chairperson
Marsha R. Zidel	-	Public Arbitrator
Laura E. Anthony	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Kimberly A. Gilmour, Esq.  
Public Arbitrator, Presiding Chairperson

May 20, 2005  
Signature Date

\_\_\_\_\_/s/  
Marsha R. Zidel  
Public Arbitrator

May 20, 2005  
Signature Date

\_\_\_\_\_/s/  
Laura E. Anthony  
Non-Public Arbitrator

May 19, 2005  
Signature Date

May 23, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**RECEIVED**

MAY 23 2005

Respondents Sands and Soler are jointly and severally liable for:


Counterclaim filing fee	<b>FL ARBITRATION</b>
Adiournment Fee	= \$2,000.00
Total Fees	= \$1,125.00
<u>Less payments</u>	= \$3,125.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10530(g) of the Code.

**ARBITRATION PANEL**

Kimberly A. Gilmour, Esq.	-	Public Arbitrator, Presiding Chairperson
Marsha R. Zidel	-	Public Arbitrator
Laura E. Anthony	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Kimberly A. Gilmour, Esq.  
Public Arbitrator, Presiding Chairperson

5/20/05  
Signature Date

\_\_\_\_\_  
Marsha R. Zidel  
Public Arbitrator

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

\_\_\_\_\_  
Laura E. Anthony  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 02-05962

Amended Stipulated Award Page 5

Respondents Sands and Soler are jointly and severally liable for:

Counterclaim filing fee	= \$2,000.00
<u>Adjournment Fee</u>	= <u>\$1,125.00</u>
Total Fees	= \$3,125.00
<u>Less payments</u>	= <u>\$3,125.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

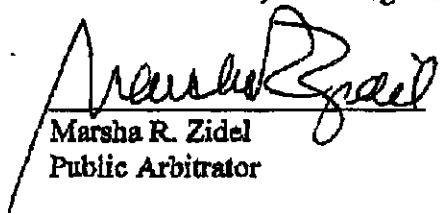
**ARBITRATION PANEL**

Kimberly A. Gilmour, Esq.	-	Public Arbitrator, Presiding Chairperson
Marsha R. Zidel	-	Public Arbitrator
Laura E. Anthony	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Kimberly A. Gilmour, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Marsha R. Zidel  
Public Arbitrator

5/20/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Laura E. Anthony  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

Respondents Sands and Soler are jointly and severally liable for:

Counterclaim filing fee	= \$2,000.00
<u>Adjournment Fee</u>	<u>= \$1,125.00</u>
Total Fees	= \$3,125.00
<u>Less payments</u>	<u>= \$3,125.00</u>
<b><i>Balance Due NASD Dispute Resolution</i></b>	<b>= \$ 0.00</b>

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

**ARBITRATION PANEL**

Kimberly A. Gilmour, Esq.	-	Public Arbitrator, Presiding Chairperson
Marsha R. Zidel	-	Public Arbitrator
Laura E. Anthony	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Kimberly A. Gilmour, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Marsha R. Zidel  
Public Arbitrator

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

  
\_\_\_\_\_  
Laura E. Anthony  
Non-Public Arbitrator

5-19-05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)