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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Sidney Gelfand

Case Number: 03-01023

Name of the Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

For Sidney Gelfand, hereinafter referred to as "Claimant": Scott L. Silver, Esq., Blum, Silver & Schwartz, L.L.P., Plantation, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Keith Olin, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 11, 2003.  
Claimant signed the Uniform Submission Agreement: February 3, 2003.  
Statement of Answer filed by Respondent on or about: June 9, 2003.  
Respondent signed the Uniform Submission Agreement: April 2, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of security industry rules and Florida Statute 517.301; breaches of contract and fiduciary duty; common law fraud; and negligence. The causes of action relate to the purchase and sale stock in Global Crossing in Claimant's account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$900,000.00, punitive damages, interest, rescission, attorneys' fees, and costs.

Respondent requested dismissal of the Statement of Claim in its entirety, costs, and attorneys' fees in accordance with Florida Statutes 57.105 and 517.211.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

**AWARD**

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

Claimant's claims for relief, including claims made under Florida Statutes Chapter 517, are dismissed, with prejudice, in their entirety.

Claimant's request for punitive damages is denied.

All parties will bear their own attorneys' fees and costs.

Any and all claims 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**

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

Initial claim filing fee	= \$ 375.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

**Adjournment Fees**

No requests for adjournments were filed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**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.

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 1,350.00

Pre-hearing conferences: February 12, 2004 1 session  
April 7, 2004 1 session  
May 17, 2004 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: November 3, 2003 1 session  
March 4, 2004 1 session

Four (4) Hearing sessions with the Panel @ \$1,200.00 = \$ 4,800.00

Hearing sessions: June 1, 2004 2 sessions  
June 2, 2004 1 session  
June 4, 2004 1 session

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Total Forum Fees = \$ 8,550.00

The Panel has assessed \$4,275.00 of the forum fees to Claimant.

The Panel has assessed \$4,275.00 of the forum fees to Respondent.

**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 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 this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 4,275.00</u>
Total Fees	= \$ 4,650.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,075.00

Respondent is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 4,275.00</u>
Total Fees	= \$11,275.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,275.00

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

**ARBITRATION PANEL**

George L. Davis	-	Public Arbitrator, Presiding Chairperson
Mark C. Perry, Esq.	-	Public Arbitrator
Joel H. Holzer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
George L. Davis  
Public Arbitrator, Presiding Chairperson

June 9, 2004  
Signature Date

/s/  
Mark C. Perry, Esq.  
Public Arbitrator

June 9, 2004  
Signature Date

/s/  
Joel H. Holzer  
Non-Public Arbitrator

June 9, 2004  
Signature Date

June 10, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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 Arbitration No. 03-01023  
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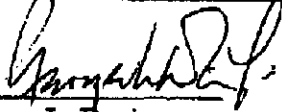
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 Public Arbitrator, Presiding Chairperson

June 9, 2004  
 Signature Date

Mark C. Perry, Esq.  
 Public Arbitrator

Signature Date

Joel H. Holzer  
 Non-Public Arbitrator

Signature Date

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

Post-It® Fax Note	7671	Date	6/10/04	# of pages	1
To	George Davis	From	Marco Battini		
Co./Dept.		Co.	NASD		
Phone #	954-972-0069	Phone #	561-362-7904		
Fax #	954-972-0069	Fax #	561-416-2267		

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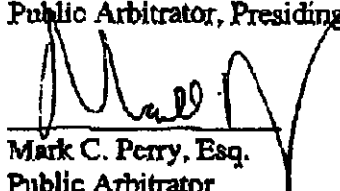
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6/9/04  
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