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

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In the Matter of the Arbitration Between:

Names of the Claimants  
Santo and Dorothy Brocato

Case Number: 03-01031

Names of the Respondents  
Barry Financial Group a/k/a  
Asset Management Securities Corp.  
Richard Jeppson and  
Joseph Fernandez, Jr.

Hearing Site: Boca Raton, FL

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

**REPRESENTATION OF PARTIES**

For Santo and Dorothy Brocato ("Brocato"), hereinafter referred to as "Claimants": Alan J. Foxman, Esq., Law Offices of Alan J. Foxman, P.A., Boca Raton, Florida.

For Barry Financial Group a/ka/ Asset Management Securities Corp. ("BFG"), Richard Jeppson ("Jeppson") and Joseph Fernandez, Jr. ("Fernandez"), hereinafter referred to as "Respondents": Allan M. Lerner, Esq., Law Offices of Allan M. Lerner, P.A., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 7, 2003.

Claimants signed the Uniform Submission Agreement: February 27, 2003.

Amended Statement of Claim filed on or about: April 21, 2003.

Claimants signed the Amended Uniform Submission Agreement: April 24, 2003.

Statement of Answer filed by Respondent Fernandez on or about: June 19, 2003.

Crossclaim filed by Respondent Fernandez on or about: June 19, 2003.

Statement of Answer, Affirmative Defenses and Motion to Dismiss filed by Respondents Barry, Jeppson and Fernandez on or about: July 31, 2003.

Respondent Barry signed the Uniform Submission Agreement: July 30, 2003.

Respondent Jeppson signed the Uniform Submission Agreement: July 30, 2003.

Respondent Fernandez signed the Uniform Submission Agreement: July 30, 2003.

Response to Motion to Dismiss filed by Claimants on or about: August 18, 2003.

**CASE SUMMARY**

Claimants alleged that Respondents made unsuitable trades of mutual fund shares in the Claimants' securities account and are liable to Claimants for fraud, negligence and failure to

supervise. The mutual funds at issue included, but were not limited to: Oppenheimer Global Growth and Income Fund, Invesco Stock Dynamics Fund and Gabelli Growth Fund.

Respondents denied the allegations of the Statement of Claim, and in particular denied that Respondent BFG was an NASD member and denied that the individual respondents were in turn associated with Respondent BFG, an NASD member. Moreover, Respondent BFG affirmatively stated, among other things, that NASD did not have subject matter jurisdiction over Respondents as the claim was pled, that the losses in the account were due to the unprecedented market decline, that Claimants ratified the trades, and that Claimants failed to mitigate their damages. In addition, Respondents asserted that Claimants ratified, and acquiesced to, the transactions in the account, and that the account was monitored by third parties, independent of Respondents.

### **RELIEF REQUESTED**

Claimants requested an award of damages in the amount of \$100,000.00, plus interest, costs of arbitration and attorney's fees.

Respondents requested that all claims against them be denied in their entirety, and that they be awarded costs of arbitration, and attorney's fees.

In his Crossclaim, Respondent Fernandez requested that he be indemnified for all damages by Respondent BFG.

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

On or about December 19, 2003, Respondent Fernandez submitted to NASD a Notice of Voluntary Dismissal, with Prejudice, of the Crossclaim of Joseph Fernandez.

On or about May 25, 2004, the panel was informed that the parties had reached an accord and settlement, and that the parties had entered into a Stipulation of Expungement and Dismissal with Prejudice, which was filed with NASD Dispute Resolution on July 14, 2004.

This matter involved disputed claims and was settled by the parties prior to the submission of any evidence by any party, and prior to the final arbitration hearing. As such, no evidence was submitted to the undersigned arbitrators (the "Panel") demonstrating that any individual Respondent was culpable of any wrongdoing. Accordingly, the parties requested that all references to the arbitration proceeding be expunged from the Central Registration Depository ("CRD") records of Respondents Fernandez and Jeppson maintained by NASD.

Pursuant to the Stipulation of Expungement and Dismissal, each party is to bear its own attorney's fees and costs. Claimants and Respondents have agreed that the Award in this matter may be executed in counterpart copies and that a handwritten, signed Award be entered. In either case, Claimants and Respondents have agreed to receive conformed copies of the Award while the originals remain on file with NASD Dispute Resolution.

### AWARD

After considering the pleadings, the proposed Stipulated Award, and the Stipulation of Expungement and Dismissal with Prejudice, 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 Respondents Fernandez' and Jeppson's registration records maintained by NASD's CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Fernandez and Jeppson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. The parties shall each bear their own costs and attorney's fees.
3. Claimants' withdrawal of all claims in this proceeding, with prejudice, is accepted and Respondents are hereby dismissed from this proceeding, 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	= \$ 225.00
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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 BFG a/k/a AMSC is a member firm and a party.

Member surcharge	= \$1,100.00
<u>Pre-hearing process fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$1,850.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed.

No adjournment fees were incurred during these proceedings.

#### 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.

No three-day cancellation fees were incurred during these proceedings.

### **AWARD**

After considering the pleadings, the proposed Stipulated Award, and the Stipulation of Expungement and Dismissal with Prejudice, 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 Respondents Fernandez' and Jeppson's registration records maintained by NASD's CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Fernandez and Jeppson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
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**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:

No hearing sessions were conducted during these proceedings.

**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**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Fernandez is solely liable for:

<u>Crossclaim Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent BFG a/k/a AMSC is solely liable for:

<u>Member Fees</u>	= \$1,850.00
Total Fees	= \$1,850.00
<u>Less payments</u>	= \$1,850.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

## ARBITRATION PANEL

*Steven R. Reininger, Esq.* - *Public Arbitrator, Presiding Chairperson*  
*Abe Mintz* - *Public Arbitrator*  
*John M. Eadie* - *Non-Public Arbitrator*

### Concurring Arbitrators' Signatures

/s/  
Steven R. Reininger, Esq.  
Public Arbitrator, Presiding Chairperson

November 19, 2004  
Signature Date

/s/  
Abe Mintz  
Public Arbitrator

November 18, 2004  
Signature Date

/s/  
John M. Eadie  
Non-Public Arbitrator

November 17, 2004  
Signature Date

November 23, 2004

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

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ARBITRATION PANEL

*Steven R. Reininger, Esq.*

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*Public Arbitrator, Presiding Chairperson*

*Abe Mintz*

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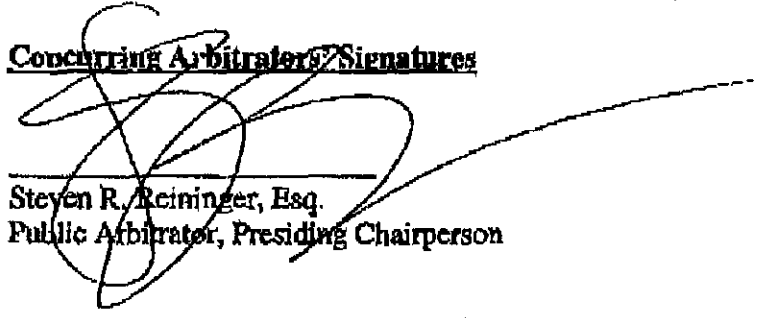
*Public Arbitrator*

*John M. Eadie*

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*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

  
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*Steven R. Reininger, Esq.*  
*Public Arbitrator, Presiding Chairperson*

11/19/04  
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*Signature Date*

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*Abe Mintz*  
*Public Arbitrator*

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*Signature Date*

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*John M. Eadie*  
*Non-Public Arbitrator*

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

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<i>Steven R. Reininger, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Abe Mintz</i>	-	<i>Public Arbitrator</i>
<i>John M. Eadie</i>	-	<i>Non-Public Arbitrator</i>

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Steven R. Reininger, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

*Abe Mintz*  
\_\_\_\_\_  
Abe Mintz  
Public Arbitrator

*11/18/04*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John M. Eadie  
Non-Public Arbitrator

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Signature Date

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



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ARBITRATION PANEL

Steven R. Reininger, Esq.	-	Public Arbitrator, Presiding Chairperson
Abe Mintz	-	Public Arbitrator
John M. Eadie	-	Non-Public Arbitrator

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Steven R. Reininger, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Abe Mintz  
Public Arbitrator

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

\_\_\_\_\_  
John M. Eadie  
Non-Public Arbitrator

John Eadie

11/17/04  
\_\_\_\_\_  
Signature Date

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