

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

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In the Matter of the Arbitration Between:

Edward Bartolett and Jean Bartolett (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Saul Herbst (Respondents)

Case Number: 03-01653

Hearing Site: New York, NY

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Nature of Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimants Edward Bartolett ("E. Bartolett") and Jean Bartolett ("J. Bartolett") hereinafter collectively referred to as "Claimants": Alan Wasserman, Esq. and Lawrence Weiner, Esq., Wilentz, Goldman & Spitzer, P.A., Woodbridge, NJ.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Saul Herbst ("Herbst") hereinafter collectively referred to as "Respondents": William J. Manning, Jr., Esq., Loeb & Loeb LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 6, 2003.

Response to Respondents' Statement of Answer filed by Claimants on or about: July 3, 2003.

Claimants signed the Uniform Submission Agreement: March 5, 2003.

Statement of Answer filed by Respondents on or about: June 6, 2003.

Respondent Merrill Lynch did not sign the Uniform Submission Agreement.

Respondent Herbst did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: negligence; negligent supervision; breach of contract; breach of implied covenant of good faith and fair dealing; breach of fiduciary duty; misrepresentation; and equitable fraud. Claimants' claim involved common stock and corporate bonds.

Respondents denied all of the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses. Claimants were experienced investors who were aware of the risks associated with their investments. The alleged losses were solely attributable to the severe bear market beginning in the year 2000.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$750,000.00; consequential damages; reimbursement of any commissions, management fees, and interest paid; interest; costs; attorneys' fees; punitive damages; and such other relief as the Arbitrators deem just and equitable.

Respondents requested dismissal with prejudice of Claimants' Statement of Claim, in its entirety, and that the Panel award Respondents attorney's fees and costs. Respondents also requested expungement of this matter from Saul Herbst's CRD records maintained by the NASD.

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

Prior to the hearing, Respondent Saul Herbst was dismissed with prejudice by Claimant.

Prior to the hearing, the parties fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The claims of Claimants are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Saul Herbst's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Herbst must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its own costs, including attorney's fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

**FEES**

Pursuant to 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

**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. Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

**Adjournment Fees**

The following adjournment fees are assessed:

January 13-16, 2004, adjournment requested by Claimant = \$1,200.00

Claimants' share = \$600.00

Respondents' share = \$600.00

**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:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: December 9, 2003 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,200.00 = \$1,200.00

Pre-hearing conference: September 9, 2003 1 session

Total Forum Fees = \$1,650.00

1. The Panel assessed \$825.00 of the forum fees jointly and severally against Claimants.
2. The Panel assessed \$825.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$2,175.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the initial amount of the hearing session deposited by the Claimant because this office was notified by the parties that they settled this matter within eight business days of the first scheduled hearing session.*

2. Respondent Merrill Lynch is solely liable for:

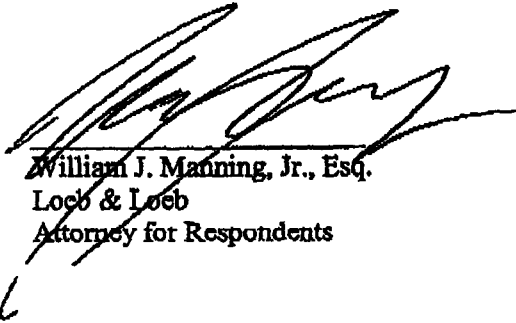
<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 825.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,425.00

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

**Parties' Signatures**



William J. Manning, Jr., Esq.  
Loeb & Loeb  
Attorney for Respondents

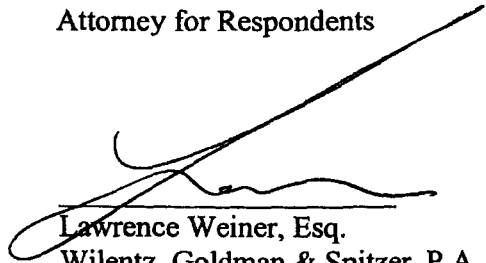
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Lawrence Weiner, Esq.  
Wilentz, Goldman & Spitzer, P.A.  
Attorney for Claimants

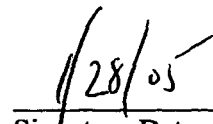
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Loeb & Loeb  
Attorney for Respondents

  
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Lawrence Weiner, Esq.  
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Attorney for Claimants


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**ARBITRATION PANEL**

Shelly Teitelbaum, Esq.	-	Public Arbitrator, Presiding Chairperson
Arnold Limsky	-	Public Arbitrator
Emad Zikry	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Shelly Teitelbaum, Esq.  
Public Arbitrator, Presiding Chairperson

  
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Signature Date

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Arnold Limsky  
Public Arbitrator

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Signature Date

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Emad Zikry  
Non-Public Arbitrator

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Signature Date

February 15, 2005  
Date of Service (For NASD Dispute Resolution use only)

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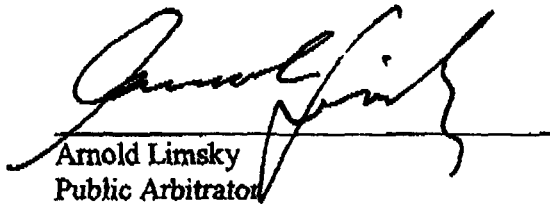
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Non-Public Arbitrator

4-1-05  
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Signature Date

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