

**AWARD**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

Name of Claimants

Lawrence W. Katz and Lisa Katz

and

03-02428  
Milwaukee, Wisconsin

Name of Respondents

Mesirow Financial, Inc. and Alan Abramson

---

Nature of the Dispute: Customers vs. Member firm and Associated Person.

**REPRESENTATION OF PARTIES**

Lawrence W. Katz and Lisa Katz ("Claimants") were represented by Mark E. Sanders, Esq., of Halling and Cayo, S.C., located in Milwaukee, Wisconsin.

Mesirow Financial Inc., ("Mesirow"), and Alan Abramson ("Abramson"), hereinafter referred to as ("Respondents") were represented by Robert J. Pluta, Esq., of Quarles and Brady, LLP., located in Milwaukee, Wisconsin.

**CASE INFORMATION**

Claimants filed their Statement of Claim on or about April 3, 2003.

Claimants signed their Uniform Submission Agreement on or about March 25, 2003.

Respondents filed the Joint Statement of Answer on or about July 9, 2003.

Respondents signed their Uniform Submission Agreements on March 25, 2003.

**CASE SUMMARY**

Claimant alleged as follows: Violations of the Wisconsin Uniform Securities Law; negligent misrepresentation; and, negligence.

Unless specially admitted in their Statement of Answer, Respondents denied the allegations in the Statement of Claim and submitted the following affirmative defenses; Claimants failed to mitigate their damages; Claimants do not state a cause of action in their Statement of Claim for which relief may be granted; Claimant's ratified all trades entered in their account; Claimants are barred by the doctrine of laches; Claimants knowingly and voluntarily assumed the risks of the investments in issue; Claimants are barred from recovery by the doctrines of waiver and estoppel; Claimants are barred by the principles of equity; Respondent Mesirow did not make any promise, warranty, express or implied, or representation to Claimants regarding the outcome of the transactions in issue;

Claimants were on notice of the transactions in their account; Mesirow is not liable to Claimant in any amount because, it acted properly and in good faith; all inherent risks of the investments were fully disclosed to the Claimants; all alleged losses that Claimants suffered were the result of adverse economic or market conditions; Claimants losses were caused by their own conduct; Claimants suffered no damages by reason of the acts or omissions of Mesirow. All of Respondents conduct was in accordance with applicable regulations and provisions of state and federal law; all activity in the accounts at issue were suitable for and consistent with the Claimants' net worth, stated investment objectives and risk tolerance; each statutory claim made by the Claimants is barred by the statute of limitations; and each tort claim made by the Claimants is barred by the economic loss doctrine.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$310,000.00 in compensatory damages, reasonable attorneys' fees, costs, and statutory interest.

Respondents requested that the claims asserted against them be dismissed in their entirety, that they be awarded costs of defense, including reasonable attorneys' fees, filing fees and costs.

In Addition Respondent Abramson requested that all references to this action be expunged from his registration records maintained by the Central Registration Depository.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original remains on file with ("NASD").

During the hearing on the merits, the Panel unanimously agreed to recommend the expungement request of Respondent Abramson.

#### **AWARD**

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

1. Claimants Lawrence W. Katz and Lisa Katz claims are dismissed in their entirety with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Alan Abramson's registration records maintained by the

Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Alan Abramson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and,
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 = \$300.00

#### **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 event giving rise to the dispute. In this matter, the member firm is Mesirow Financial Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

(1) Pre-hearing session with a single arbitrator	x	450.00	\$	450.00
January 8, 2004	1	session		
(1) Pre-hearing session with Panel	x	1,125.00	\$	1,125.00
November 3, 2003	1	session		

(7)	Hearing sessions	x	1,125.00	\$	7,875.00
	April 27, 2004	2	sessions		
	April 28, 2004	2	sessions		
	April 29, 2004	2	sessions		
	July 19, 2004	1	session		
	Total Forum Fees			\$	9,450.00

The Arbitration Panel has assessed \$4,725.00 of the forum fees to Claimants.

The Arbitration Panel has assessed \$4,725.00 of the forum fees to Respondents jointly and severally.

### FEE SUMMARY

Claimants Lawrence W. Katz and Lisa Katz shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	4,725.00
Total Fees	= \$	5,025.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	3,600.00

Respondent Mesirow shall be and hereby is solely liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	00

Respondents Mesirow and Abramson are jointly and severally liable for:

<u>Forum Fees</u>	= \$	4,725.00
Total Fees	= \$	4,725.00
<u>Less payments</u>	= \$	2,250.00
Balance Due NASD Dispute Resolution	= \$	2,475.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Ben L. Chernov, Esq. - Public Arbitrator, Presiding Chairperson  
Jere W. Wiedenman, J.D. - Public Arbitrator  
Lawrence Tepper, CPA - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Ben L. Chernov, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Jere W. Wiedenman, J.D.  
Public Arbitrator

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

\_\_\_\_\_  
Lawrence Tepper, CPA  
Non-Public Arbitrator

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

Date of service \_\_\_\_\_

*August 2, 2004*

NASD Dispute Resolution  
Award # 03-02428  
Page 5 of 5

ARBITRATION PANEL

Ben L. Chernov, Esq. - Public Arbitrator, Presiding Chairperson  
Jere W. Wiedenman, J.D. - Public Arbitrator  
Lawrence Tepper, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Ben L. Chernov  
Ben L. Chernov, Esq.  
Public Arbitrator, Presiding Chair

7/29/04  
Signature Date

Jere W. Wiedenman, J.D.  
Jere W. Wiedenman, J.D.  
Public Arbitrator

                      
Signature Date

Lawrence Tepper, CPA  
Lawrence Tepper, CPA  
Non-Public Arbitrator

                      
Signature Date

Date of service August 2, 2004

NASD Dispute Resolution  
Award # 03-02428  
Page 5 of 5

ARBITRATION PANEL

Ben L. Chernov, Esq. - Public Arbitrator, Presiding Chairperson  
Jere W. Wiedenman, J.D. - Public Arbitrator  
Lawrence Tepper, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Ben L. Chernov, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

7/29/04

Jere W. Wiedenman, J.D.  
Public Arbitrator

Signature Date

Lawrence Tepper, CPA  
Non-Public Arbitrator

Signature Date

Date of service

August 2, 2004

NASD Dispute Resolution  
Award # 03-02428  
Page 5 of 5

ARBITRATION PANEL

Ben L. Chernov, Esq. - Public Arbitrator, Presiding Chairperson  
Jere W. Wiedenman, J.D. - Public Arbitrator  
Lawrence Tepper, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Ben L. Chernov, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Jere W. Wiedenman, J.D.  
Public Arbitrator

Signature Date

Lawrence Tepper  
Lawrence Tepper, CPA  
Non-Public Arbitrator

7/27/04  
Signature Date

Date of service

August 2, 2004