

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

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In the Matter of the Arbitration Between:

Philip Celniker (Claimant) v. Linsco/Private Ledger Corp., ALFS, Inc., and Thomas Cechini (Respondents)

Case Number: 03-03154

Hearing Site: Buffalo, New York

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

**REPRESENTATION OF PARTIES**

Claimant Philip Celniker ("Celniker") hereinafter referred to as "Claimant": Donald G. McGrath, Esq., McGrath & Polvino, PLLC, Williamsville, NY.

Respondents Linsco/Private Ledger Corp. ("LPL") and Thomas Cechini ("Cechini"): David J. Freniere, Esq., LPL Financial Services, Boston, MA.

Respondent ALFS, Inc. ("ALFS"): Amy E. Rush, Esq., Sonnenschein Nath & Rosenthal, Kansas City, MO.

LPL, Cechini, and ALFS are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: April 25, 2003.

Claimant signed the Uniform Submission Agreement: April 23, 2003.

Joint Statement of Answer and Request for Dismissal filed by Respondents LPL and Cechini on or about: June 23, 2003.

Respondent LPL signed the Uniform Submission Agreement: May 5, 2003.

Respondent Cechini signed the Uniform Submission Agreement: December 30, 2003.

Statement of Answer filed by Respondent ALFS on or about: June 23, 2003.

Respondent ALFS signed the Uniform Submission Agreement: June 16, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: directing and effecting an unsuitable trade; making a recommendation and effecting a trade without an adequate basis; engaging in deceptive acts and practices; misrepresenting or omitting material facts; breach of contract; breach of duty; violations of federal and state securities laws; violations of state consumer protection laws;

breach of fiduciary duty; violation of the rules and regulations of the NASD; and failure to supervise. The causes of action relate to the purchase of the Allstate Putnam Variable Annuity.

Unless specifically admitted in their Answer, Respondents LPL and Cechini denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$64,639.71 plus 9% interest for two years, or in the alternative rescission; and attorneys' fees pursuant to Section 349 of the General Business Law of New York.

Respondents LPL and Cechini requested dismissal of the Statement of Claim with prejudice; attorneys' fees and costs; an order that this matter be expunged from the CRD system; and such other relief deemed necessary or appropriate.

Respondent ALFS requested that Claimant's claim and demand for damages be dismissed in its entirety; and costs, expenses, and attorneys' fees.

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

On or about August 6, 2004, NASD Dispute Resolution was notified that the parties had settled this matter and requested the entry of this Stipulated Award.

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

### **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 Claimant has dismissed all claims with prejudice against Respondents.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Thomas L. Cechini's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that

pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Cechini must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. 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(s) at the time of the events giving rise to the dispute. In this matter, the member firm Linsco/Private Ledger Corp. is a party.

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

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(s) at the time of the events giving rise to the dispute. In this matter, the member firm ALFS, Inc. is a party.

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

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

The 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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: June 21, 2004	1 session
July 12, 2004	1 session

One (1) Pre-hearing conference session with the Panel @ \$750.00 = \$ 750.00  
Pre-hearing conferences: December 29, 2003 1 session

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Total Forum Fees = \$1,650.00

1. The Panel has assessed \$750.00 of the forum fees against Claimant.
2. The Panel has assessed \$300.00 of the forum fees against Linsco/Private Ledger Corp.
3. The Panel has assessed \$300.00 of the forum fees against ALFS, Inc.
4. The Panel has assessed \$300.00 of the forum fees against Cechini.

### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 975.00
Less payments	= \$ 995.00
Refund Due Claimant	= \$ 20.00
  
2. Respondent Linsco/Private Ledger is solely liable for:

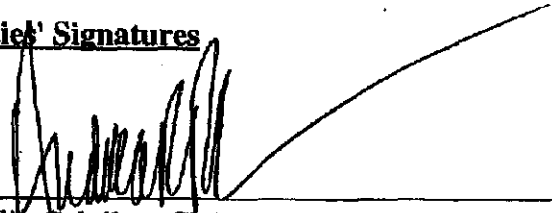
Member Fees	= \$3,550.00
Forum Fees	= \$ 300.00
Total Fees	= \$3,850.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 300.00
  
3. Respondent ALFS is solely liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$ 300.00
Total Fees	= \$3,850.00
Less payments	= \$3,850.00
Balance Due NASD Dispute Resolution	= \$ 0.00
  
4. Respondent Cechini is solely liable for:

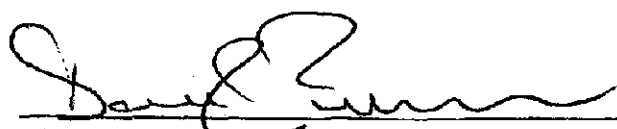
Forum Fees	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 300.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

  
Philip Celniker, Claimant  
By: McGrath & Polvino, PLLC

  
Signature Date

  
Linsco/Private Ledger Corporation  
and Thomas Cechini, Respondents  
By: LPL Financial Services

10/12/04  
Signature Date


  
ALFS, Inc., Respondent  
By: Sonnenschein Nath & Rosenthal

11/2/04  
Signature Date

**ARBITRATION PANEL**

David K. Silverberg	-	Public Arbitrator, Presiding Chair
George Massik	-	Public Arbitrator
Donald A. Olszewski	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
David K. Silverberg  
Public Arbitrator, Presiding Chair

3/2/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
George Massik  
Public Arbitrator

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

\_\_\_\_\_  
Donald A. Olszewski  
Non-Public Arbitrator

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

March 8, 2005  
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Date of Service (For NASD office use only)

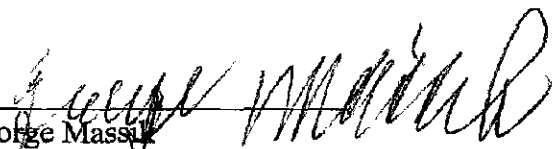
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Signature Date

  
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George Massik  
Public Arbitrator

2/24/05  
\_\_\_\_\_  
Signature Date

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