

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

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In the Matter of the Arbitration Between:

Marvin Galler, Roberta Galler, Marvin Galler, as trustee of the Amherst Cardiology & Internal Medicine Associates Money Purchase Pension Plan, and Marvin Galler, as trustee of the Amherst Cardiology & Internal Medicine Associates Profit Sharing Plan (Claimants) v. Lehman Brothers, Inc., Steven Mitchell, Neil Mitchell, Mark Stevenson, and Gil Sacher (Respondents)

Case Number: 03-04504

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customers v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Marvin Galler ("M. Galler"), Roberta Galler ("R. Galler"), Marvin Galler, as trustee of the Amherst Cardiology & Internal Medicine Associates Money Purchase Pension Plan ("ACI Pension Plan"), and Marvin Galler, as trustee of the Amherst Cardiology & Internal Medicine Associates Profit Sharing Plan ("ACI Profit Sharing Plan") hereinafter collectively referred to as "Claimants": Robert J. Lane, Jr., Esq., Hodgson Russ, LLP, Buffalo, NY.

Respondents Lehman Brothers, Inc. ("Lehman"), Steven Mitchell ("S. Mitchell"), Neil Mitchell ("N. Mitchell"), Mark Stevenson ("Stevenson"), and Gil Sacher ("Sacher") hereinafter collectively referred to as "Respondents": Brian F. McDonough, Esq., Drinker Biddle & Reath, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 19, 2003.

Amended Statement of Claim filed on or about: July 30, 2003.

Claimants signed the Uniform Submission Agreement: June 18, 2003.

Joint Statement of Answer and Request for Expungement filed by Respondents on or about: September 12, 2003.

Respondent Lehman signed the Uniform Submission Agreement: November 2, 2003.

Respondent N. Mitchell signed the Uniform Submission Agreement: November 3, 2003.

Respondent Stevenson signed the Uniform Submission Agreement: November 3, 2003.

Respondent S. Mitchell did not sign the Uniform Submission Agreement.

Respondent Sacher did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; failure to implement instructions; unauthorized trading; creating an excessive margin balance; negligence; breach of contract; fraud and/or negligent misrepresentation; violation of federal securities laws; violation of Section 349 of the New York General Business Law; and failure to supervise. The causes of action relate to shares of Pactel, as well as other unspecified securities.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in excess of \$3,000,000.00; punitive damages in the amount of \$1,000,000.00; interest; costs, fees, and expenses; and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed in its entirety with the costs of this proceeding assessed against Claimants; and expungement of this matter from the records of Respondents S. Mitchell, N. Mitchell, Stevenson, and Sacher.

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

Respondents S. Mitchell and Sacher did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about December 27, 2004, NASD Dispute Resolution was notified that the parties settled this matter through mediation. By letter dated January 3, 2005, Respondents informed NASD Dispute Resolution that the parties were requesting a 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 an 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 Claimant are dismissed in their entirety.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Steven Mitchell's, Neil Mitchell's, Mark Stevenson's and Gil Sacher'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, Respondents Steven Mitchell, Neil Mitchell, Mark Stevenson, and Gil Sacher must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$600.00
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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 persons at the time of the events giving rise to the dispute. In this matter, Lehman Brothers, Inc. is a party.

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

July 26-30, 2004 and August 9-11, 2004, joint adjournment request	= Waived
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#### **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:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
<u>Pre-hearing conference: January 26, 2004 1 session</u>	

Total Forum Fees = \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 1,800.00
Refund Due Claimants	= \$ 600.00

2. Respondent Lehman is solely liable for:

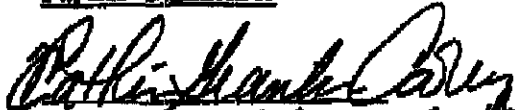
Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$12,950.00
Refund Due Lehman	= \$ 4,400.00

3. Respondents are jointly and severally liable for:


Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution


Parties' Signatures

  
Marvin Geller as counsel for  
Claimant *Marvin Geller*


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

  
Roberta Geller as counsel for  
Claimant *Roberta Geller*

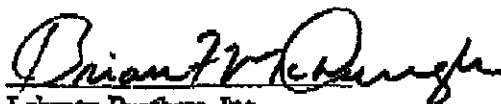
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Signature Date

  
Marvin Geller, Trustee of the *Counsel*  
Amherst Cardiology & Internal  
Medicine Associates Money  
Purchase Pension Plan  
Claimant

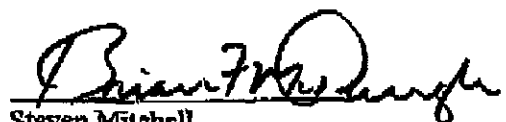
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Signature Date

  
Marvin Geller, Trustee of the *Counsel*  
Amherst Cardiology & Internal  
Medicine Associates Profit  
Sharing Plan  
Claimant

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

  
Lehman Brothers, Inc. as *Counsel*  
Respondent

1/25/05  
Signature Date

  
Steven Mitchell as *Counsel*  
Respondent

1/25/05  
Signature Date

Neil Mitchell Counsel  
Neil Mitchell  
Respondent

1/25/05  
Signature Date

Mark Stevenson Counsel  
Mark Stevenson  
Respondent

1/25/05  
Signature Date

Gil Sacher Counsel  
Gil Sacher  
Respondent

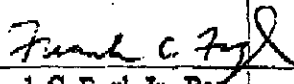
1/25/05  
Signature Date

**ARBITRATION PANEL**

Frank C. Fogl, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Murray S. Marsh	-	Public Arbitrator
Birgitta K. Siegel, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Presiding Chair

1/31/05  
Signature Date

Murray S. Marsh  
Public Arbitrator

Signature Date

Birgitta K. Siegel, Esq.  
Non-Public Arbitrator

Signature Date

JULY 6, 2005  
Date of Service (For NASD office use only)

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Murray S. Marsh	-	Public Arbitrator
Birgitta K. Siegel, Esq.	-	Non-Public Arbitrator

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Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Murray S. Marsh  
Public Arbitrator

6-14-05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Birgitta K. Siegel, Esq.  
Non-Public Arbitrator

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

JULY 6, 2005  
Date of Service (For NASD office use only)



Re: Galler  
03-04504

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Murray S. Marsh	-	Public Arbitrator
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Frank C. Fogl, Jr., Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Murray S. Marsh  
Public Arbitrator

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

Birgitta Siegel Esq.  
Birgitta K. Siegel, Esq.  
Non-Public Arbitrator

August 18, 2005 (again)  
Signature Date  
effective Jan 31, 2005

JUL 6, 2005  
Date of Service (For NASD office use only)