

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

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**In the Matter of the Arbitration Between:**

**Harvey T. Vechery IRA Rollover Custodian Account, Harvey T. Vechery and Linda M. Vechery trustees of the Vechery Family Trust dtd 10/09/1984, and Tracy Von Vechery as trustee of the Tracy Von Vechery Living Trust dtd 10/28/97, Claimants v. Lehman Brothers, Inc. and Jeff Maurice Turnbaugh, Respondents**

**Case Number: 03-04616**

**Hearing Site: Los Angeles, California**

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**Nature of the Dispute:** Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

**For Claimants:**

**Jeff Dennis Ferentz, Esq.  
Jeff Dennis Ferentz, Inc.  
Newport Beach, California**

**For Respondents:**

**Stephen Young, Esq.  
Scott E. Hinsche, Esq.  
Keesal, Young & Logan  
Long Beach, California**

**CASE INFORMATION**

**Statement of Claim filed: June 23, 2003**

**Claimants' Joint Uniform Submission Agreement signed: July 15, 2003**

**Joint Statement of Answer filed by Respondents: February 27, 2004**

**Respondent Lehman Brothers, Inc.'s Uniform Submission Agreement signed: March 17, 2004**

**Respondent Jeff Maurice Turnbaugh's Uniform Submission Agreement signed: March 12, 2004**

### **CASE SUMMARY**

Claimants alleged unsuitability, negligence, breach of fiduciary duty, material misrepresentation and omission of fact, fraud, failure to supervise, and violation of the rules and regulations of the exchanges to which Respondents belong. Claimants' claims involved securities including, but not limited to, BEA Systems, Micron Technology, Agilent, Nortel, and Juniper.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$3,598,966.00 in compensatory damages, pre- and post-judgment interest, disgorgement of Respondents' commissions and compensation, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of all reference to this matter from Respondent Jeff Maurice Turnbaugh's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including arbitrators' fees and expenses.

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

Claimants' Statement of Claim included additional Claimants Robin Vechery ACF Chanelle E. Vechery U/CA/UTMA and Robin Ann Vechery TTEE Robin Ann Vechery Living Trust dtd 09/15/1997. However, these two entities did not file with NASD Dispute Resolution a properly executed submission agreement or Waiver Agreement, and thus were not included as Claimants in this matter. At the evidentiary hearing on October 25, 2005, Claimants withdrew any and all claims submitted in the Statement of Claim by Robin Vechery ACF Chanelle E. Vechery U/CA/UTMA and Robin Ann Vechery TTEE Robin Ann Vechery Living Trust dtd 09/15/1997. On October 25, 2005, the Panel ruled that Robin Vechery ACF Chanelle E. Vechery U/CA/UTMA and Robin Ann Vechery TTEE Robin Ann Vechery Living Trust dtd 09/15/1997 were not parties to this arbitration.

Claimants and Claimants' counsel signed an undated Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On June 7, 2005, Claimants filed a Motion to Amend the Statement of Claim to name two additional Respondents. On June 21, 2005, Respondents filed an Opposition to Claimants' Motion to Amend the Statement of Claim. On August 5, 2005, the Panel held a telephonic pre-hearing conference with the parties to hear oral argument on Claimants' motion. On August 5, 2005, the Panel issued an Order denying Claimants' Motion to Amend the Statement of Claim.

On June 9, 2005, Claimants withdrew their unsuitability claim against all Respondents.

At the evidentiary hearing on October 25, 2005, the parties informed the Panel that the parties had entered into a confidential settlement agreement including Claimants' dismissal with prejudice of both Respondents. Respondent Jeff Maurice Turnbaugh then brought an oral motion for expungement of all reference to this matter from his registration records maintained by the CRD. Counsel for Claimants and Respondents represented on the record that the settlement of the claim was reached without any discussion of a proposed expungement of Respondent Jeff Maurice Turnbaugh's CRD record. Respondent Jeff Maurice Turnbaugh was questioned on the record by both his counsel and Claimants' counsel, and was further examined by the Panel. Counsel for Claimants then represented on the record that he would not have named Respondent Jeff Maurice Turnbaugh as a Respondent had he been advised of the facts as disclosed in the testimony of Claimant Harvey T. Vechery given on October 24, 2005. Counsel for Claimants was authorized by Claimant Harvey T. Vechery to advise the Panel that Respondent Jeff Maurice Turnbaugh had been named in error.

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**

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

- 1) Claimants and Respondents have entered into a confidential settlement agreement and Claimants' claims are dismissed with prejudice.
- 2) Claimants' claims against Respondent Jeff Maurice Turnbaugh are without factual or legal merit and Respondent Jeff Maurice Turnbaugh was mistakenly named in the Statement of Claim.

- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jeff Maurice Turnbaugh's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Jeff Maurice Turnbaugh must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Lehman Brothers, Inc. is a party and the following fees are assessed:

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

#### **Adjournment Fees**

The following adjournment fees are assessed:

May 2-6, 2005 hearing adjournment requested by all parties	= \$ 1,200.00
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Pursuant to Rule 10403(b) of the Code, the adjournment fees were waived.

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00  
Pre-hearing conference: August 5, 2005 1 session

3 Hearing sessions @ \$1,200.00/session = \$ 3,600.00  
Hearings: October 24, 2005 2 sessions  
October 25, 2005 1 session

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**Total Forum Fees = \$ 4,800.00**

1. The Panel assessed \$2,400.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$2,400.00 of the forum fees to Respondent Lehman Brothers, Inc.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 2,400.00</u>
Total Fees	= \$ 3,000.00
<u>Less payments</u>	<u>= \$( 1,800.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,200.00</b>

2. Respondent Lehman Brothers, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 2,400.00</u>
Total Fees	= \$10,950.00
Less payments	= \$( 8,550.00)
<u>Less unused mediation deposit</u>	<u>= \$( 1,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,200.00</b>

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

**ARBITRATION PANEL**

Kenneth E. Owen	-	Public Arbitrator, Presiding Chair
Michael R. Mitchell	-	Public Arbitrator
Donald L. Lisle	-	Non-Public Arbitrator

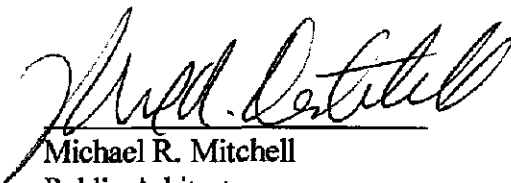
**Concurring Arbitrators' Signatures**



Kenneth E. Owen  
Chair, Public Arbitrator

Oct. 25, 2005

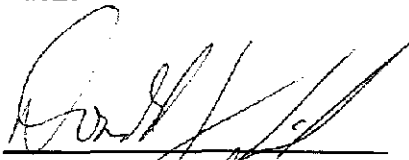
Signature Date



Michael R. Mitchell  
Public Arbitrator

Oct. 25, 2005

Signature Date



Donald L. Lisle  
Non-Public Arbitrator

Oct 25, 2005

Signature Date

10/25/05

Date of Service