

---

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

---

In the Matter of the Arbitration Between:

Names of the Claimants

Lawrence Luxenberg  
Anne Luxenberg

Case Number: 03-05092

Names of the Respondents

Barry Financial Group, Inc.  
Asset Management Securities Corp.  
James A. Barry, Jr.

Hearing Site: Boca Raton, Florida

---

Nature of the Dispute: Customer v. Non-Member, Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Lawrence Luxenberg and Anne Luxenberg, hereinafter collectively referred to as "Claimants": Chad N. Cagan, Esq., Sonnenblick, Parker & Selvers, Freehold, New Jersey.

For Barry Financial Group, Inc. ("BFG"), Asset Management Securities Corp. ("AMS") and James A. Barry, Jr. ("Barry"), hereinafter collectively referred to as "Respondents": Allan M. Lerner, Esq., Law Offices of Allan M. Lerner, P.A., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: July 8, 2003.

Claimants signed the Uniform Submission Agreements: June 20, 2003.

Answer, Affirmative Defenses and Motion to Dismiss or, in the Alternative, for a More Definite Statement of Claim filed by Respondents on or about: October 2, 2003.

Respondents signed the Uniform Submission Agreements: September 30, 2003.

First Amended Statement of Claim filed by Claimants on or about: June 21, 2004.

Motion to Strike First Amended Statement of Claim filed by Respondents on or about: July 6, 2004.

Motion to Dismiss Claimants' Statement of Claim filed by Respondent BFS on or about: July 6, 2004.

Opposition to Respondents' Motion to Strike Amended Statement of Claim and Respondent BFS' Motion to Dismiss filed by Claimants on or about: July 22, 2004.

Reply to Claimants' Opposition filed by Respondents on or about: July 27, 2004.

**CASE SUMMARY**

Claimants alleged that Respondents made unsuitable trades of mutual fund shares in Claimants' securities account and were therefore allegedly liable to Claimants for unsuitability, breach of fiduciary duty, fraud and misrepresentation, securities laws violations, negligence, breach of contract, respondent superior liability, control person liability, aiding and abetting and failure to supervise.

Respondents denied the allegations of the Statement of Claim, and in its Motion to Dismiss, Respondent BFG denied that it was an NASD member. Moreover, Respondent BFG affirmatively stated, among other things, that NASD did not have subject matter jurisdiction over Respondent BFG as the claim was pled, that the losses in the account were due to the unprecedented market decline, that Claimants ratified the trades and that Claimants failed to mitigate their damages. In addition, Respondents asserted that Claimants ratified and acquiesced in the transactions in the account.

### **RELIEF REQUESTED**

Claimants requested an award of compensatory damages in the amount of \$530,000.00, as well as punitive damages, market adjusted damages, interest, arbitration costs, attorneys' fees and such other relief as deemed equitable, just and necessary by the Panel.

Respondents requested that all claims asserted against them be denied in their entirety, and that the Panel award them their arbitration costs and attorneys' fees.

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

Respondent BFG is not an NASD member firm, but having filed a properly executed submission to arbitration, answered the claim, participated in the settlement thereof, and pursuant to the Panel's Order dated August 13, 2004, is bound by the determination of the Panel on all issues submitted.

On or about December 23, 2003, the Panel issued an Order that denied Respondents' Motion to Dismiss and granted Respondents' Motion for a More Definite Statement of Claim.

On or about August 13, 2004, the Panel issued an Order that denied Respondents' Motion to Strike Claimants' First Amended Statement of Claim and Respondent BFG's Motion to Dismiss.

On or about November 3, 2004, the parties filed with NASD Dispute Resolution a Stipulation to Dismiss Proceeding and Expunge the NASD Central Registration Depository ("CRD") records of Respondents AMS and Barry, and a proposed Stipulated Award for review and approval by the Panel.

Claimants and Respondents have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award be entered. In either case, Claimants and Respondents have agreed to receive conformed copies of the Stipulated Award while the originals remain on file with NASD Dispute Resolution.

### **AWARD**

After considering the pleadings, proposed Stipulated Award and Stipulation of Expungement and Dismissal with Prejudice, the Panel has decided in full and final determination of all issues submitted as follows:

1. This matter involved disputed claims and was settled by the parties prior to the submission of any evidence by any party, and prior to the final arbitration hearing. As no hearing was conducted, no

evidence was submitted to the Panel demonstrating that any individual Respondent is culpable of any wrongdoing. Accordingly, the Panel recommends that all references to the above-captioned arbitration be expunged from Respondents AMS' and Barry's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents AMS and Barry must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

2. The parties shall each bear their own costs and attorneys fees; and
3. Claimants' withdrawal of all claims in this proceeding, with prejudice, is accepted and Respondents are hereby dismissed from this proceeding.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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. Accordingly, Respondent AMS is a member firm and a party:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$4,000.00
Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

No adjournment fees were assessed in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were assessed in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred during this proceeding.

**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 session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: December 23, 2003 1 session	
One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: July 20, 2004 1 session	
<hr/>	
Total Forum Fees	= \$1,650.00

Pursuant to the agreement of the parties, the Panel has assessed forum fees as follows:

\$825.00 to Claimants, jointly and severally  
\$825.00 to Respondents, jointly and severally

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 825.00
Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$1,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent AMS 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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 825.00</u>
Total Fees	= \$ 825.00

<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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

**ARBITRATION PANEL**

Jeffrey Scott Grubman, J.D.	-	Public Arbitrator, Presiding Chairperson
Hugh N. Fryer, Esq.	-	Public Arbitrator
Bernard A. Taub	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Jeffrey Scott Grubman, J.D.  
Public Arbitrator, Presiding Chairperson

November 29, 2004  
Signature Date

/s/  
Hugh N. Fryer, Esq.  
Public Arbitrator

December 7, 2004  
Signature Date

/s/  
Bernard A. Taub  
Non-Public Arbitrator

November 29, 2004  
Signature Date

December 8, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-05092  
Stipulated Award Page 5

<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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

**ARBITRATION PANEL**

Jeffrey Scott Grubman, J.D.  
Hugh N. Fryer, Esq.  
Bernard A. Taub


-  
-  
-

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Jeffrey Scott Grubman, J.D.  
Public Arbitrator, Presiding Chairperson



Signature Date

Hugh N. Fryer, Esq.  
Public Arbitrator

Signature Date

Bernard A. Taub  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

DEC. 7. 2004 2:03PM

NASD REGULATIONS

NO. 530 P. 5/5

NASD Dispute Resolution  
Arbitration No. 03-05092  
Stipulated Award Page 5

<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 825.00

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

**ARBITRATION PANEL**

Jeffrey Scott Grubman, J.D.	-	Public Arbitrator, Presiding Chairperson
Hugh N. Fryer, Esq.	-	Public Arbitrator
Bernard A. Taub	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Jeffrey Scott Grubman, J.D.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Hugh N. Fryer, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Bernard A. Taub  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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

**ARBITRATION PANEL**

Jeffrey Scott Grubman, J.D.	-	Public Arbitrator, Presiding Chairperson
Hugh N. Fryer, Esq.	-	Public Arbitrator
Bernard A. Taub	-	Non-Public Arbitrator

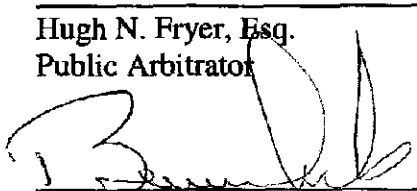
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Jeffrey Scott Grubman, J.D.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Hugh N. Fryer, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Bernard A. Taub  
Non-Public Arbitrator

10/29/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)