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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-05933

Leon Silverberg, individually and as trustee  
of the Miriam Silverberg Rev. Trust U/A DTD 3/13/97  
Miriam Silverberg, individually and as trustee  
of the Miriam Silverberg Rev. Trust U/A DTD 3/13/97

Names of the Respondents

Hearing Site: Boca Raton, Florida

Asset Management Securities Corp.  
Barry Financial Group

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Nature of the Dispute: Customer vs. Member and Non-Member.

**REPRESENTATION OF PARTIES**

For Leon Silverberg, individually and as trustee of the Miriam Silverberg Rev. Trust U/A DTD 3/13/97 and Miriam Silverberg, individually and as trustee of the Miriam Silverberg Rev. Trust U/A DTD 3/13/97, hereinafter collectively referred to as "Claimants": Russell C. Silvergate, Esq., Dickinson, Murphy, Rex and Sloan, Boca Raton, Florida.

For Asset Management Securities Corp ("AMSC") and Barry Financial Group ("BFG"), 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: August 15, 2003.

Claimants signed the Uniform Submission Agreement: July 28, 2003.

Statement of Answer filed by Respondents on or about: November 24, 2003.

Respondents signed the Uniform Submission Agreement: November 17, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) common law fraud; 2) breach of fiduciary duty; 3) negligent failure to supervise; and, 4) negligence. The causes of action relate to alleged unsuitable trades of various mutual funds in Claimants' account, including, but not limited to, Aim Value Fund Cl A, Franklin Small Cap Growth Fund Cl A, Growth Fund American Inc. Cl F and Franklin Advisor Ser. 1 Dividend Growth Fd Cl T.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and affirmatively stated, among other things, that the losses in Claimants' account were due to the unprecedented

market decline, that the Claimants ratified the trades and the Claimants failed to mitigate their damages. In addition, the Respondents asserted that the Claimants ratified and acquiesced to the transactions in their account.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$151,076.34, interest, costs, expenses and disbursements including expert witness fees and for such other and further relief as the Panel deemed just and proper.

Respondents requested that the Statement of Claim be denied in its entirety.

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

Respondent BFG is a non-member of NASD. However, said non-member executed the Uniform Submission Agreement and submitted to the jurisdiction of NASD.

On or about October 18, 2004, the parties notified NASD Dispute Resolution that they had settled this matter and further submitted, on or about October 19, 2004, a letter indicating that they would be sending a proposed Stipulated Award.

On or about January 11, 2005, the parties submitted to NASD Dispute Resolution a Stipulation to Dismiss Proceeding and Expunge the NASD Central Registration Depository (the "CRD") record of Respondent AMSC. The parties stipulated and agreed that this matter be dismissed, with prejudice, and that Claimants and Respondents, as to each other, shall bear their respective costs and attorneys' fees. The parties further stipulated that said dismissal shall be a bar to the bringing of any action based on or including the claims or counterclaims for which this action has been or could have been brought against Respondents by the Claimants or against the Claimants by the Respondents. In addition, the parties stipulated and agreed that this matter be expunged from the NASD CRD record of Respondent AMSC based on the finding by the Claimants and their attorneys, after diligent discovery and based on representations from Respondents, that their claims pertain only to Respondent BFG, the Claimants' investment advisor, not the broker-dealer. The Claimants and Respondent BMG have since amicably resolved this matter.

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. It also was agreed between the parties that the claims and allegations in this case related solely to the investment advisor and not the registered broker-dealer. As such, Claimants agree to dismiss, with prejudice, all claims against Respondent AMSC. Accordingly, all references to this proceeding shall be expunged from the NASD CRD record of Respondent AMSC.

Pursuant to the Stipulation to Dismiss and Expunge, each party is to bear its own attorneys' fees and costs.

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

### **AWARD**

After considering the pleadings, the Stipulation to Dismiss and Expunge and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel, having been advised that the claims and allegations in this case should have been directed solely at the investment advisor and not the NASD registered broker-dealer, recommends the expungement of all reference to the above captioned arbitration from Respondent AMSC's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent AMSC must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The parties shall each bear their own costs and attorneys fees.

Claimants' withdrawal of all claims in this proceeding, with prejudice, is accepted and the Respondents are hereby dismissed from this proceeding.

Any and all claims for relief not specifically addressed herein, are denied.

### **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	= \$300.00
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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 at the time of the events giving rise to the dispute. Accordingly, Respondent AMSC is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

No requests for adjournments were filed in this matter for which fees were assessed.

#### **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 cancellation fees were assessed in this matter.

**Injunctive Relief Fees**

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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: January 30, 2004 1 session	
Total Forum Fees	= \$1,125.00

The Panel has assessed \$562.50 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

**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	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent AMSC is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

NASD Dispute Resolution

Arbitration No. 03-05933

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

**ARBITRATION PANEL**

*Gary W. Pollack, Esq.*

*James B. May, Esq.*

*Nicholas A. Natale*

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*Public Arbitrator, Presiding Chairperson*

*Public Arbitrator*

*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

/s/

Gary W. Pollack, Esq.

Public Arbitrator, Presiding Chairperson

01/25/05

Signature Date

/s/

James B. May, Esq.

Public Arbitrator

01/27/05

Signature Date

/s/

Nicholas A. Natale

Non-Public Arbitrator

01/24/05

Signature Date

01/31/05

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

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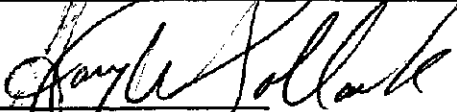
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James B. May, Esq.  
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Public Arbitrator  
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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Nicholas A. Natale  
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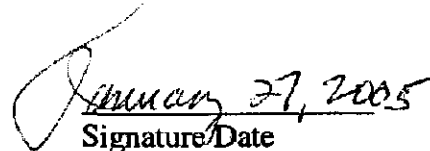
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James B. May, Esq.	-	Public Arbitrator
Nicholas A. Natale	-	Non-Public Arbitrator

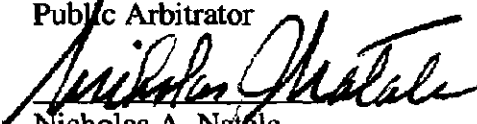
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