

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

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In the Matter of the Arbitration Between:

Frank J. Walker and Frank J. Walker IRA (Claimants) v. Merrill Lynch Pierce Fenner and Smith and Dale E. Belz (Respondents)

Case Number: 04-05555

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customers vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimants Frank J. Walker ("Walker") and Frank J. Walker IRA ("Walker IRA"), hereinafter collectively referred to as "Claimants": Phillip P. Nicely, Esq., N. Tonawanda, NY.

Respondents Merrill Lynch Pierce Fenner and Smith ("Merrill") and Dale E. Belz ("Belz"), hereinafter collectively referred to as "Respondents": Jacqueline M. Gorham, Esq., Krebsbach & Snyder, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 3, 2004.

Claimants signed the Uniform Submission Agreement: August 3, 2004.

Joint Statement of Answer filed by Respondents on or about: November 11, 2004.

Respondent Merrill signed the Uniform Submission Agreement: September 21, 2004.

Respondent Belz signed the Uniform Submission Agreement: August 30, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to supervise and breach of contract. The causes of action relate to E-Bay, Amazon, and Yahoo.

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

**RELIEF REQUESTED**

Claimants requested:

|  |                |
|--|----------------|
| Compensatory Damages   | \$167,057.00   |
| Punitive Damages   | \$300,000.00   |
| Attorneys' Fees  | \$ Unspecified |
| Other Non-Monetary Relief: return of unauthorized shares sold. |                |

Respondents requested that the Statement of Claim be dismissed in all respects, all references to this arbitration be expunged from the CRD record relating to Belz, and that all disbursements and costs, including forum fees be assessed against Claimants.

**OTHER ISSUES CONSIDERED AND DECIDED**

The parties have 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dale E. Belz' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Dale E. Belz must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

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 = \$ 300.00

#### **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, Merrill is a party.

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

#### **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 a single arbitrator @ \$450.00 | = \$ 450.00 |
| Pre-hearing conference: June 2, 2005 1 session                  |             |

|   |               |
|---|---------------|
| One (1) Pre-hearing session with Panel @ \$1,125.00 | = \$ 1,125.00 |
| Pre-hearing conference: February 2, 2005 1 session  |               |

|  |               |
|--|---------------|
| Two (2) Hearing sessions @ \$1,125.00  | = \$ 2,250.00 |
| Hearing Date: July 12, 2005 2 sessions |               |

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|                  |               |
|------------------|---------------|
| Total Forum Fees | = \$ 3,825.00 |
|------------------|---------------|

1. The Panel has assessed \$ 1,912.50 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 1,912.50 of the forum fees jointly and severally to Respondents.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 300.00   |
| <u>Forum Fees</u>                   | = \$ 1,912.50 |
| Total Fees                          | = \$ 2,212.50 |
| Less payments                       | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 787.50   |

## 2. Respondent Merrill is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| <u>Member Fees</u>                  | = \$ 5,200.00 |
| <u>Total Fees</u>                   | = \$ 5,200.00 |
| <u>Less payments</u>                | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00     |

## 3. Respondents Merrill and Belz are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| <u>Forum Fees</u>                   | = \$ 1,912.50 |
| <u>Total Fees</u>                   | = \$ 1,912.50 |
| <u>Less payments</u>                | = \$ .00      |
| Balance Due NASD Dispute Resolution | = \$ 1,912.50 |

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

NASD Dispute Resolution  
Arbitration No. 04-05555  
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**ARBITRATION PANEL**

|                      |   |  |
|----------------------|---|--|
| David Buch           | - | Public Arbitrator, Presiding Chairperson |
| Ralph L. Halpren     | - | Public Arbitrator                        |
| Anthony D. McCaffrey | - | 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, which is my award.



David Buch  
Public Arbitrator, Presiding Chairperson

7/27/05  
Signature Date

\_\_\_\_\_  
Ralph L. Halpren  
Public Arbitrator

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

\_\_\_\_\_  
Anthony D. McCaffrey  
Non-Public Arbitrator

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

July 28, 2005  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**


|                      |   |  |
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David Buch  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Ralph L. Halpren  
Public Arbitrator

7-25-05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Anthony D. McCaffrey  
Non-Public Arbitrator

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

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**Concurring Arbitrators' Signatures**

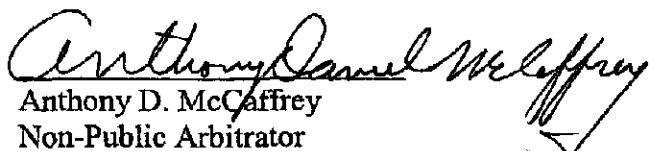
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Ralph L. Halpren  
Public Arbitrator

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

  
Anthony D. McCaffrey  
Non-Public Arbitrator

7/25/05  
Signature Date

July 28, 2005  
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