

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of Arbitration Between

Name of Claimant

CTI Logistics, Inc.

vs.

Case # 93-00030

Name of Respondents

Merrill, Lynch Pierce, Fenner & Smith, Inc.  
John Eckert

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**REPRESENTATION**

For Claimant, CTI Logistics, Inc. ("Claimant"), Harry L. Garman, Esq., from the law firm of Garman and Andur.

For Respondents, Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and John Eckert ("Eckert"), William Crowe, Esq., in-house counsel.

**CASE INFORMATION**

Statement of Claim was filed on January 3, 1993.

Claimant's Submission Agreement was signed on December 7, 1992.

Joint Statement of Answer was filed by Merrill and Eckert on March 25, 1993.

Merrill's Submission Agreement was signed on March 24, 1993.

Eckert did not execute a Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:	November 10, 1993	-	2 sessions
	November 11, 1993	-	2 sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York, New York.

### **CASE SUMMARY**

Claimant commenced this arbitration proceeding to recover damages as a result of Respondents' failure to provide Claimant with competent professional services and breach of their contractual and legal duties. Claimant alleged that Respondents violated various NASD Rules of Fair Practice concerning suitability and supervision and the New York Stock Exchange Rules 401, 405 and 723. Claimant further alleged that Respondents breached their fiduciary duties owed to claimant by misrepresenting investments, by recommending unsuitable investments and by failing to disclose material facts thereby promoting their own interest over Claimants.

Respondents, Merrill and Eckert, maintained that Claimant directed, approved, authorized and ratified each and every transaction in its account. Therefore, respondents are not liable for any of Claimant's losses in connection with the transactions made in Claimant's account. Any losses that have occurred were a direct result of market conditions and cannot be attributed to Respondents. Respondents further maintained that all transactions made on behalf of Claimant were suitable and made in accordance with Claimant's stated investment objectives and financial conditions.

Respondent further maintained that if the objections were understated or the transactions inappropriate then Claimant and its agent were negligent in handling the account. Respondents contend that this negligence would bar Claimant's recovery or proportionately reduce the amount of such recovery.

### **RELIEF REQUESTED**

Claimant requested an award of \$120,000.00 or such other amount to be determined based upon the evidence presented before the Panel, interest on all sums lost by Claimant from August 25, 1992 and all costs, expenses and reasonable attorney's fees incurred by CTI in commencing and pursuing this arbitration against Respondents.

Respondents requested that an award be rendered dismissing the Statement of Claim in its entirety and granting to Respondents the amount of their cost, fees, and disbursements.

**AWARD**

1. All claims asserted against Respondents are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

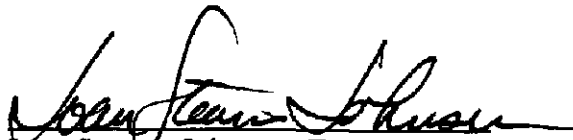
Non-refundable Filing Fee:	\$200.00
Hearing Session Fees:	\$750.00 x 4 sessions = \$3,000.00

1. Claimant is assessed \$200.00 non-refundable filing fee. Claimant is further assessed \$1,500.00. Claimant deposited \$950.00 and shall receive a credit in that amount. Therefore, the balance due by Claimant is \$750.00.
2. Respondents are jointly and severally assessed \$1,500.00 in forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Joan Stearns-Johnsen, Esq.	-	Public Chairperson
H. Victor Schwimmer, Esq.	-	Public Panelist
Paul M. Rosenthal	-	Industry Panelist

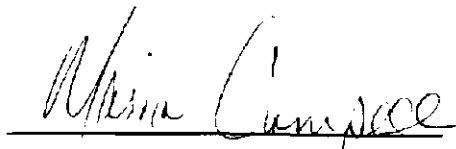
  
Joan Stearns-Johnsen, Esq.

Date of Decision: January 10, 1994

STATE OF NEW YORK  
COUNTY OF

S.S.:

On this 10th day of December, 1993, before me personally appeared Joan Stearns-Johnsen, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



MARIA A. CAMPESE  
Notary Public, State of New York  
No. 52-4965360  
Qualified in Suffolk County  
Commission Expires April 18, 1994

ARBITRATION PANEL

Joan Stearns-Johnsen, Esq. - Public Chairperson

H. Victor Schwimmer, Esq. - Public Panelist

Paul M. Rosenthal - Industry Panelist



Paul M. Rosenthal

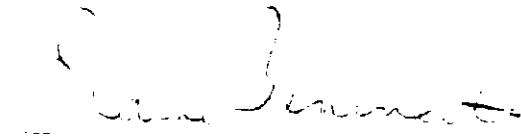
Date of Decision: January 10, 1994

STATE OF NEW YORK

S.S.:

COUNTY OF NEW YORK


On this <sup>15</sup> day of December, 1993, before me personally appeared Paul M. Rosenthal known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



ELAINE BENINATTI  
Notary Public, State of New York  
No. 43-4888002  
Qualified in Richmond County  
Commission Expires March 23, 1995

ARBITRATION PANEL

Joan Stearns-Johnsen, Esq.	-	Public Chairperson
H. Victor Schwimmer, Esq.	-	Public Panelist
Paul M. Rosenthal	-	Industry Panelist

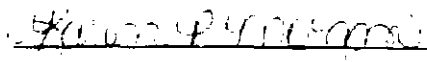
  
H. Victor Schwimmer, Esq.

Date of Decision: January 10, 1994

STATE OF ~~NEW YORK~~ <sup>Montgomery</sup>  
COUNTY OF ~~Buena Vista~~ <sup>Buena Vista</sup>

S.S.:

On this 29 day of December, 1993, before me personally appeared H. Victor Schwimmer, Esq. known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

  
My Commission Expires 3.3.97