

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

**In the Matter of Arbitration Between**

**Name of Claimant**

**Bennett Mostel**

**94-00205**

**Name of Respondent**

**Emanuel and Company**

---

**REPRESENTATION**

For Claimant Bennett Mostel ("Claimant") appeared Paul Chernis, Esq. of the law firm of Silverman, Collura & Chernis, P.C. located in New York, New York.

Respondent Emanuel and Company ("Respondent") did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim filed: January 18, 1994.

Claimant's Submission Agreement signed on: January 17, 1994.

Respondent neither filed a Statement of Answer nor executed a Submission Agreement.

**HEARING INFORMATION**

Hearing dates/sessions: February 7, 1995 - One Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

**CASE SUMMARY**

Claimant alleged that, in late 1987 or early 1988, he began working for

Respondent as a registered representative. Claimant further alleged that, on or about January 21, 1988, he sought to sell his own shares of common stock and common stock purchase warrants in Medmasters Systems, Inc. and that he wrote out the order tickets for the sales and left them with Respondent's order room. Claimant also alleged that he received confirmations of the trades from Respondent's clearing agent and that the approximate proceeds of the transaction were \$62,812.50.

Claimant alleged that, after approximately a week to ten days after he received the confirmations, he attempted to obtain the proceeds of the sale, but he was told by Respondent that there was a problem with the trade. Claimant further alleged that Respondent told him that the broker on the other side of the trade changed its mind and, therefore, Respondent broke the trades. In addition, Claimant alleged that, shortly thereafter, he received cancellation confirmations which showed that the trades had been reversed.

Claimant alleged that, in mid-February, 1988, Medmasters Systems, Inc.'s principal market-maker went out of business and the price of the stock fell to almost nothing. Claimant further alleged that he pressed Respondent to pay him the proceeds of the sale and that, when he did not receive the proceeds, he left Respondent's employ. Claimant also alleged that the trades were final and binding, having been executed and confirmed as agency transactions, that Respondent is liable for breach of contract and for violating Section 1 of Article III of the NASD Rules of Fair Practice.

#### **RELIEF REQUESTED**

Claimant requested actual damages of \$63,000.00, interest of 8% per annum for six years, attorney's fees of \$10,000.00. In addition, Claimant requested that all forum fees be assessed against Respondent.

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

The arbitration panel made the following rulings concerning Respondent, who did not file a Statement of Answer and a Submission Agreement, and who also failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondent pursuant to Section 12 of the NASD Code of Arbitration Procedure.

3. In view of (2) above, the panel found that Respondent was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon Respondent, pursuant to Section 25(a) of the Code.
4. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of Arbitration Procedure, the panel found that the NASD provided Respondent with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Respondent, whose absence was unexcused.

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

#### **AWARD**

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

1. Respondent be and hereby is liable and shall pay Claimant the sum of \$62,812.50 plus interest of 8% per annum from January 18, 1994 to the date of payment.
2. Claimant's request for attorney's fees be and hereby is denied.
3. All other claims be and hereby are denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee and have assessed the following forum fees:

1 hearing session x \$500.00 = \$500.00

Claimant be and hereby is liable for the sum of \$500.00 representing the total forum fees assessed. Claimant previously deposited \$500.00 with the NASD. Therefore, nothing is owed to the NASD by the Claimant.

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

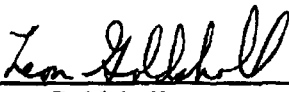
**ARBITRATORS' SIGNATURES**

---

Neil J. Carey  
Public Chairperson

---

Richard E. Lerner, Esq.  
Public Arbitrator

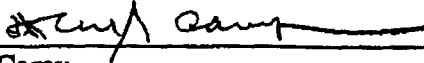


---

Leon Goldsholl  
Industry Arbitrator

Date of Decision: March 17, 1995

**ARBITRATORS' SIGNATURES**



\_\_\_\_\_  
Neil J. Carey  
Public Chairperson

\_\_\_\_\_  
Richard E. Lerner, Esq.  
Public Arbitrator

\_\_\_\_\_  
Leon Goldsholl  
Industry Arbitrator

Date of Decision: March 17, 1995

STATE OF: *New York*

COUNTY OF: *Queens* ss:

On this *15<sup>th</sup>* day *March*, 1995, before me personally appeared Leon Goldsholl known and 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.

*Beth Petznick*  
BETH PETZNICK  
Notary Public, State of New York  
No. 01PA 4857205  
Qualified in Queens County  
Commission Expires April 28, 19*96*

STATE OF:

COUNTY OF: ss:

On this      day      , 1995, before me personally appeared Neil J. Carey known and 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.

---

STATE OF:

COUNTY OF: ss:

On this      day      , 1995, before me personally appeared Richard E. Lerner, Esq. known and 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.

---

**STATE OF:**

**COUNTY OF:**                      **ss:**

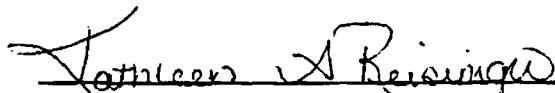
On this       day       , 1995, before me personally appeared **Leon Goldsholl** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

---

**STATE OF:** *Connecticut*

**COUNTY OF:** *Fairfield* **ss:**

On this *16* day *March* 1995, before me personally appeared **Neil J. Carey** known and 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 Exp. Feb. 28, 1997

**STATE OF:**

**COUNTY OF:**                      **ss:**

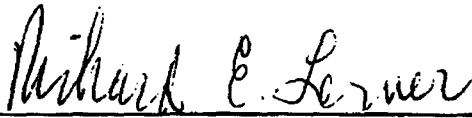
On this       day       , 1995, before me personally appeared **Richard E. Lerner, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

---

**ARBITRATORS' SIGNATURES**

---

Neil J. Carey  
Public Chairperson

  
Richard E. Lerner, Esq.  
Public Arbitrator

---

Leon Goldsholl  
Industry Arbitrator

Date of Decision: March 17, 1995



STATE OF:

COUNTY OF:            ss:

On this     day     , 1995, before me personally appeared Leon Goldsholl known and 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.

---

STATE OF:

COUNTY OF:            ss:

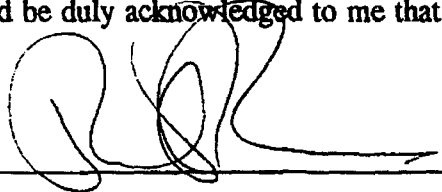
On this     day     , 1995, before me personally appeared Neil J. Carey known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

---

STATE OF: New Jersey

COUNTY OF: Essex    ss:

On this 16 day March, 1995, before me personally appeared Richard E. Lerner, Esq. known and 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.



---

PAUL A. FARRAY  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Dec. 10, 1998