

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

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In the Matter of the Arbitration Between:

David Schwartz (Claimant) v. Kurz-Liebow & Company, Inc. (Respondent)

Case Number: 95-05297

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Claimant David Schwartz ("Schwartz") hereinafter referred to as "Claimant": Richard Sacks, Investors Recovery Services, Novato, CA.

Respondent Kurz-Liebow & Company, Inc. ("Kurz") hereinafter referred to as "Respondent": Kenneth S. Yudell, Esq., Morgenthau, Greenes, Goldfarb & Aronauer, P.C., New York, NY. Previously represented by: Samuel Goldfarb, Esq., Morgenthau, Greenes, Goldfarb & Aronauer, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 8, 1995.

Claimant signed the Uniform Submission Agreement: October 19, 1995.

Statement of Answer filed by Respondent on or about: February 29, 1996.

Respondent signed the Uniform Submission Agreement: February 27, 1996.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability; misrepresentation; negligence; and breach of fiduciary duty. Claimant's claim involved Notes issued by Towers Financial Corporation.

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

**RELIEF REQUESTED**

Claimant requested that he be awarded damages against Respondent in the amount of \$100,000.00; punitive damages, costs, along with such other and further relief as the Panel deems just and equitable.

Respondent requested that the Panel render an award in favor of it.

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

NASD Dispute Resolution ("NASD DR") has been unable to reschedule this matter since the cancellation of the hearings scheduled for April 30, 1997 and July 8 and 9, 1997. Several attempts were made to contact Claimant's counsel asking for the status of this matter. To date, NASD DR has not received a response and the Panel has determined to dismiss this matter without prejudice for failure to prosecute.

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 and Claimant's lack of prosecution, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed without prejudice.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied without prejudice.

### **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	= \$150.00
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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, Kurz-Liebow & Co., Inc. is a party.

Member surcharge	= \$300.00
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#### **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 @ \$300.00	= \$ 300.00
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Pre-hearing conference: November 15, 1996 1 session

Four (4) Hearing sessions @ \$500.00 = \$2,000.00

Hearing Dates: April 28, 1997 2 sessions

April 29, 1997 2 sessions

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Total Forum Fees = \$2,300.00

1. The Panel has assessed \$1,150.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,150.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 150.00

Forum Fees = \$1,150.00

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Total Fees = \$1,300.00

Less payments = \$ 950.00

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Balance Due NASD Dispute Resolution = \$ 350.00

2. Respondent is solely liable for:

Member Fees = \$ 300.00

Forum Fees = \$1,150.00

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Total Fees = \$1,450.00

Less payments = \$ 0.00

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Balance Due NASD Dispute Resolution = \$1,450.00

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


Cynthia L. Boyce, Esq.	-	Public Arbitrator, Presiding Chair
Murray E. Bovarnick	-	Public Arbitrator
Fred Shinagel	-	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.

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Cynthia L. Boyce, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Murray E. Bovarnick  
Public Arbitrator

12 / 12 / 04  
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Signature Date

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Fred Shinagel  
Non-Public Arbitrator

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Signature Date

January 19, 2005  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Cynthia L. Boyce, Esq.	-	Public Arbitrator, Presiding Chair
Murray E. Bovarnick	-	Public Arbitrator
Fred Shinagel	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

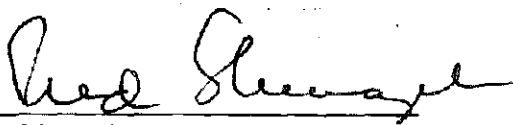
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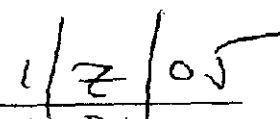
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Cynthia L. Boyce, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Murray E. Bovarnick  
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