

NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Lombard Securities Incorporated

Case No.  
95-05679

Name of Respondents

Thomas F. White & Co., Inc.  
Lombard Institutional Brokerage, Inc.

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REPRESENTATION

Lombard Securities, Inc. ("Claimant") was represented by Robert W. Keene, Jr. Esq. of the law firm of Miles & Stockbridge, Rockville, Maryland.

Lombard Institutional Brokerage, Inc. and Thomas F. White & Co., Inc. (collectively "Respondents") were represented by Robert T. Sullwold, Esq. of the law firm of Sullwold & Hughes, San Francisco, California

CASE INFORMATION

Claimant's Statement of Claim was filed on December 1, 1995.

Claimant's Answer to Respondent's Counterclaim was filed on March 21, 1996.

Claimant's Submission Agreement, executed by Daniel T. McHugh, President of Lombard Securities, Inc., was signed on November 30, 1995.

Respondents' Statement of Answer and Counterclaim was filed on February 21, 1996.

Respondents' Submission Agreement, executed by Thomas Soucie, Executive Vice President of Thomas F. White & Co., Inc., was signed on February 21, 1996.

HEARING INFORMATION

Pre-Hearing Conference: February 18, 1998 - one session with one arbitrator  
March 24, 1998 - one session with one arbitrator

Hearing Dates/Sessions: October 5, 1998 - one session  
October 6, 1998 - two sessions  
October 7, 1998 - three sessions

Hearing Location: NASD Regulation, Inc., Office of Dispute Resolution,  
Washington, D.C.

### CASE SUMMARY

Claimant commenced this arbitration to recover actual and punitive damages in the amount of \$600,000 arising from Respondents alleged trademark infringement of Claimant's distinctive marks. Claimant alleged that Respondent purposely used the marks "Lombard", "Lombard Institutional Brokerage", and its distinctive "L" to mislead the public as to the source or origin of brokerage services. Claimant further alleged that Respondents' misappropriation violated the Fair Practice Rules of the NASD since Respondents did not identify the company distinctly and clearly. Claimant sought injunctive relief to force Respondents to cease and desist from using Claimant's distinctive marks since Respondents' alleged trademark infringement caused Claimant to lose potential business in the brokerage industry.

Respondents denied that they committed any wrongdoing alleged in Claimant's Statement of Claim and requested recovery of \$500,000 in actual and punitive damages arising from Claimant's wrongdoing in failing to adhere to NASD Procedures. Respondents asserted that the names used are not so similar as to confuse or mislead the public. Respondents further asserted that NASD's District Business Conduct Committee for District No. 1 determined that its name was not confusingly similar to Claimant's name. Respondents also asserted that they did not copy, adopt, imitate, or simulate the fonts or styles used by Claimant in its corporate name. Respondents maintained that these assertions clearly showed that there was no trademark infringement nor did Respondents use Claimant's name to generate business. Respondents claimed that the NASD Business Conduct Committee had already determined the issue and that they therefore are entitled to damages due to Claimant's failure to adhere to NASD procedures.

### RELIEF REQUESTED

Claimant, in its pleadings, requested actual damages in the amount of \$300,000 and punitive damages in the amount of \$300,000 plus Claimant's attorneys' fees. Claimant also requested that Respondent cease and desist from using Claimant's distinctive marks.

Respondents, in their pleadings, requested that Claimant's Statement of Claim be denied in its entirety. Respondents also requested actual damages in the amount of \$100,000 and Punitive damages in the amount of \$400,000 plus all arbitration fees, expenses, and attorneys' fees.

### OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc. ("NASD Regulation").

At the commencement of the hearing, Respondents withdrew their counterclaims for actual and punitive damages.

### AWARD

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

1. Respondents Lombard Institutional Brokerage, as a division of Thomas F. White & Co., Inc., shall cease and desist from all advertising and communicating with the investing public that uses

the word "Lombard" except when used in combination with the words "Brokerage, Inc."

2. The Claimant's requests for punitive and actual damages are denied in their entirety.
3. That the parties shall bear their respective costs, including attorneys' fees except as costs and forum fees are addressed below.
4. Any and all claims for relief not specifically addressed herein are denied in their entirety.

#### OTHER COSTS

Respondent Lombard Institutional Brokerage, Inc. has paid a member surcharge fee of \$500.

Respondent Thomas F. White & Co., Inc. owes a member surcharge fee of \$500.

Claimants have paid a member surcharge fee of \$500.

#### FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

$(2 \text{ pre hearing conferences with one arbitrator} \times \$300) = 600 + (6 \text{ hearing sessions} \times 1000) = \$6600$   
total forum fees - Claimant's hearing session deposit of \$1,000 - Respondent Lombard Institutional Brokerage, Inc.'s hearing session deposit of \$750 = \$4850 net due.

Respondents Lombard Institutional Brokerage, Inc. and Thomas F. White & Co., Inc., are jointly and severally assessed the balance of the forum fees in the amount of \$4850. Respondents Lombard Institutional Brokerage, Inc. and Thomas F. White & Co., Inc. are entitled to offset this amount with their postponement fee of \$1000 that remained on deposit. The amount due as forum fees from Respondents Lombard Institutional Brokerage, Inc. and Thomas F. White & Co., Inc. is \$3,850.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Date Award Signed

Nov. 10 '98

Concurring Arbitrators' Signatures

Ida W. Drain  
Ida W. Drain, Esq., Chairperson  
Industry Arbitrator

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Arthur J. Salzburg, Esq., Panelist  
Industry Arbitrator

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Louis Nebel, Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation: November 12, 1998

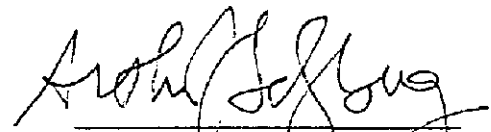
Date Award Signed

Concurring Arbitrators' Signatures

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Ida W. Draim, Esq., Chairperson  
Industry Arbitrator

11-10-98

  
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Arthur J. Salzburg, Esq., Panelist  
Industry Arbitrator

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Louis Nebel, Panelist  
Industry Arbitrator

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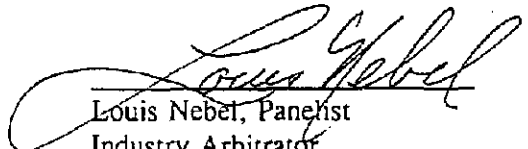
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Ida W. Draim, Esq., Chairperson  
Industry Arbitrator

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Arthur J. Salzborg, Esq., Panelist  
Industry Arbitrator

11/6/98

  
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Louis Nebel, Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation: November 12, 1998.