

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Anthony Mallilo

96-04310

Name of Respondents

Landmark International Equities  
Craig S. Redding  
Eric J. Aronson  
William Nunziato

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**REPRESENTATION**

For Claimant Anthony Mallilo ("Claimant") appeared Jeffrey M. Blum, Esq., of the law offices Mallilo & Grossman located in Flushing, New York.

For Respondents Landmark International Equities ("Landmark") and William Nunziato ("Nunziato") appeared William Nunziato of Landmark International Equities located in Westbury, New York.

For Respondent Craig S. Redding ("Redding") appeared Robert Bertsch, Esq., a sole practitioner with offices located in Port Washington, New York.

For Respondent Eric J. Aronson ("Aronson") appeared Mary A. Miller, Esq., of the law offices Wexler & Burkhart located in Mitchel Field, New York.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on September 26, 1996.

Claimant's Submission Agreement was signed on September 25, 1996.

A Joint Statement of Answer was filed by Respondents Landmark, Nunziato and Aronson (collectively "Respondents") on December 17, 1996.

Landmark did not submit a properly executed Submission Agreement.

Nunziato's Submission Agreement was signed on January 9, 1997.

Aronson's Submission Agreement was signed on January 21, 1997.

Redding did not file a Statement of Answer or a properly executed Submission Agreement.

### **HEARING INFORMATION**

Pre-Hearing Conferences:	June 3, 1997	One Session
	July 8, 1997	One Session
Hearing Dates/Sessions:	August 18, 1997	One Session
	May 4, 1998	One Session

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that, while his account was with Landmark, he experienced problems including a constant change in the personnel assigned to both manage and supervise his account. Claimant further alleged that this turnover caused his account to be reassigned from Redding to Aronson. Claimant contended that Landmark and its agents made a series of errors and misrepresentations, and refused to respond to repeated telephone calls and written requests. Claimant further contended that Landmark's pattern of mismanagement and fraud, coupled with a total lack of supervision by branch management and the compliance department, culminated in a failure by Respondents to execute sales orders given both verbally and in writing. Claimant alleged that letters demanding the sale of his securities and the issuance of a check for the proceeds were ignored until he sought the intervention of the NASD and SEC. Claimant further alleged that after Respondents received a copy of the letters to the NASD and SEC, he received a call from Nunziato, a member of the Compliance Department, in response to his request to liquidate his holdings. Claimant alleged, however, that, before selling the securities, Nunziato demanded that Claimant retract his statements to the regulatory bodies. Claimant alleged that, when he refused, Nunziato promised that, in addition to executing the sell orders, a retraction would allow them to receive an allocation of a new penny stock that was coming to market. Claimant further alleged that he refused to retract his complaints and continued to demand execution of sell orders.

Respondents maintained that Claimant was a sophisticated and active trader, who was attempting to disavow unprofitable securities transactions which he placed with full knowledge of the risks. Respondents further maintained that Claimant entered into numerous transactions in which Redding and Aronson were the registered representatives, and that each transaction was discussed with and approved by Claimant. Respondents contended that Claimant received written confirmations and monthly statements of his account, and was fully apprised of all information concerning his investments by price, number of shares purchased, the market in which the shares were traded, and the cost. Respondents asserted that Claimant was kept apprised as to what gains and losses he made, and that Claimant willingly accepted the risks of trading.

### **RELIEF REQUESTED**

Claimant requested:

- (a) Compensatory damages estimated to exceed \$50,000.00;
- (b) Costs, expenses and disbursements;
- (c) Punitive damages in an amount to be determined by the arbitrators; and
- (d) Such other relief as the panel of arbitrators deemed just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, and such other and further relief as the arbitration panel may deem just and proper.

### **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.

On July 21, 1997, counsel for Aronson made a Motion to Dismiss for failure of Claimant to produce documents and information. The panel denied this motion on August 11, 1997.

By letter dated May 1, 1998, Aronson stated that he reached a settlement with Claimant, and, therefore, Aronson did not appear at the hearing in this matter. The panel was advised of the settlement and the amount of the settlement was deducted in calculating compensatory damages.

Prior to the hearing conducted on May 4, 1998, Claimant settled all claims against Redding. The panel was advised of the settlement, and the amount of the settlement was deducted in calculating compensatory damages.

The panel made the following determinations concerning Redding, who did not file a Statement of Answer or a Submission Agreement; Landmark who did not file a Submission Agreement; and Landmark and Nunziato who did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Nunziato and Redding were persons associated with a member at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Nunziato and Redding pursuant to Rule 10301 of the Code.
3. The panel found that Landmark was a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Landmark pursuant to Rule 10301 of the Code.
4. The panel found that Landmark was required to file a Submission Agreement with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Landmark pursuant to Rule 10314(a) of the Code.
5. The panel found that Redding was required to file a Statement of Answer and a

Submission Agreement with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Redding pursuant to Rule 10314(a) of the Code.

6. In addition, in accordance with Rules 10310, 10315, and 10318 of the Code, the panel found that NASD Regulation, Inc. provided Landmark and Nunziato with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Landmark and Nunziato whose absences were unexcused.

### **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. Landmark and Nunziato be and hereby are jointly and severally liable for and shall pay to Claimant the sum of **TWENTY SEVEN THOUSAND TWENTY SEVEN DOLLARS** (\$27,027.00), with interest at 9% per annum starting January 1, 1996.
2. Landmark and Nunziato be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$650.00 as reimbursement for the non-refundable filing fee and hearing session deposit previously submitted by Claimant.
3. Claimant's request for attorneys' fees is hereby denied.
4. All other requests are hereby denied.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$150.00 non-refundable filing fee deposited by Claimant and have assessed the following forum fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
1 Pre-hearing conference (with two arbitrators)	=	\$ 500.00
2 Hearing sessions x \$500.00	=	\$1,000.00

1. Landmark and Nunziato be and hereby are jointly and severally liable for the sum of \$1,800.00 representing the total amount of forum fees assessed. Claimant previously deposited \$500.00 with NASD Regulation, Inc. and, therefore, Landmark and Nunziato shall pay the balance of \$1,300.00.
2. Landmark and Nunziato be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$650.00 in accordance with the "Award" section

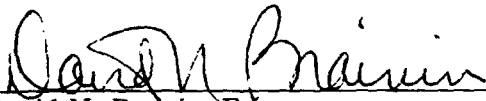
above.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**


David N. Brainin, Esq.	-	Public Chairperson
James J. Powers, Esq.	-	Public Arbitrator
Francis O. Odubekun	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
\_\_\_\_\_  
David N. Brainin, Esq.  
Chairperson - Public Arbitrator

Date of Decision: June 11, 1998

I, **David N. Brainin, Esq.**, 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 N. Brainin, Esq.

**ARBITRATION PANEL**

David N. Brainin, Esq.	-	Public Chairperson
James J. Powers, Esq.	-	Public Arbitrator
Francis O. Odubekun	-	Industry Arbitrator

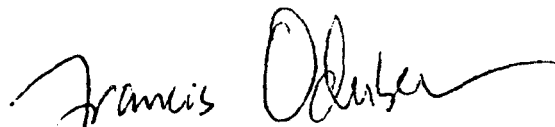
**CONCURRING ARBITRATOR'S SIGNATURE**



\_\_\_\_\_  
Francis O. Odubekun  
Industry Arbitrator

Date of Decision: June 11, 1998

I, **Francis O. Odubekun**, 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.




\_\_\_\_\_  
Francis O. Odubekun

**ARBITRATION PANEL**

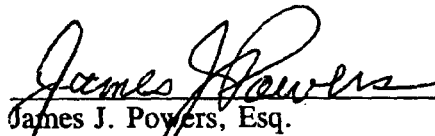
David N. Brainin, Esq.	-	Public Chairperson
James J. Powers, Esq.	-	Public Arbitrator
Francis O. Odubekun	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
\_\_\_\_\_  
James J. Powers, Esq.  
Public Arbitrator

Date of Decision: June 11, 1998

I, **James J. Powers, Esq.**, 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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James J. Powers, Esq.