

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Madhusudan Sen as Power of Attorney for Pradeep Srivastava, (Claimant) vs. W.R. Lazard, Laidlaw & Luther Incorporated and Bernard K. Addo, (Respondents)

Case Number: 97-00014

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Madhusudan Sen ("Sen") as Power of Attorney for Pradeep Srivastava ("Srivastava"), hereinafter referred to as "Claimant": Martin L. Feinberg, Esq., a sole practitioner, New York, NY.

Respondent, W.R. Lazard, Laidlaw & Luther Incorporated ("Lazard"), did not appear at the hearing in this matter. Previously represented by: Samuel L. Molinari, Esq., Guest & Savage, Hartford, CT and Michael B. Bartoszek, W.R. Lazard, Laidlaw Incorporated, New York, NY, respectively.

Respondent, Bernard K. Addo ("Addo"), did not appear at the hearing in this matter. Previously represented by: Brian P. Biggins, Esq., Brian P. Biggins & Associates, Rocky River, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: January 2, 1997.

Claimant signed the Uniform Submission Agreement: January 31, 1997.

Statement of Answer and Crossclaim filed by Lazard on or about: May 12, 1997.

Lazard signed the Uniform Submission Agreement: June 20, 1997.

Statement of Answer filed by Addo on or about: May 9, 1997.

Reply to Crossclaim filed by Addo on or about: June 4, 1997.

Addo signed the Uniform Submission Agreement: April 18, 1997.

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### **CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentation and omission of material facts; failure to comply with instructions concerning the management of Claimant's portfolio; failure to execute sell orders; violations of the antifraud provisions of the federal securities laws; common law fraud; breach of fiduciary duty; portfolio mismanagement; breach of contract; failure to supervise; and respondeat superior. Claimant's claim involved unspecified financial products.

Unless specifically admitted in his Answer, Addo denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's action is barred due to Sen's lack of standing in which to use this forum for his complaint; Claimant's action is barred by his own fraud and misrepresentation; all trades placed by and through Addo were authorized; all trades were ratified in Claimant's account by failing to object to such transactions within a reasonable time after learning of the transactions; Claimant received in a timely fashion all account statements and confirmations for transactions in his account and ratified such transactions; Claimant waived any claims by failing to object to allegedly unauthorized trades within a reasonable time after the trades occurred; and Claimant, namely Srivastava, makes no claims in the Statement of Claim and seeks no relief.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$70,000.00; pre-award interest at the legal rate of 9% per year; punitive damages in an amount double the amount of compensatory damages; costs, expenses, and disbursements; reasonable attorneys' fees; and such other relief as the Panel deems just and proper.

Addo requested that the Statement of Claim be dismissed in its entirety, that judgement be entered in his favor and against the Claimant, and that costs and such other relief as the Panel deems just and proper be granted in his favor and against the Claimant.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Addo has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Addo present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

On October 4, 2000, Claimant's counsel informed NASD Dispute Resolution, Inc. that Claimant was withdrawing, with prejudice, all claims against Lazard.

During the hearing in this matter, Claimant made a motion to amend the Statement of Claim to add Sen as a Claimant in his individual capacity. After due consideration, the Panel denied said motion.

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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Addo be and hereby is liable for and shall pay to Claimant, Srivastava, the sum of \$10,000.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.
3. Lazard's Crossclaim is hereby dismissed in its entirety.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 200.00
Crossclaim filing fee	= \$ 500.00

#### **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. In this matter, W.R. Lazard, Laidlaw & Luther Incorporated is a party.

Member surcharge	= \$ 350.00
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**Adjournment Fees**

Adjournments requested during these proceedings:

January 23, 2001, adjournment by Claimant = WAIVED

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$750.00	= \$ 750.00
Pre-hearing conference: February 4, 1998 1 session	
One (1) Hearing session x \$750.00	= \$ 750.00
Hearing Date: April 3, 2001 1 session	
Total Forum Fees	= \$1,500.00

1. The Panel has assessed \$750.00 of the forum fees against Claimant.
2. The Panel has assessed \$750.00 of the forum fees against Addo.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Lazard, requested copies, \$15.75.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 950.00
Less payments	= \$ 950.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Lazard be and hereby is solely liable for:

Crossclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 350.00
<u>Administrative Costs</u>	<u>= \$ 15.75</u>
Total Fees	= \$ 865.75
<u>Less payments</u>	<u>= \$1,615.75</u>
Refund Due to Lazard	= \$ 750.00

3. Addo be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$ 750.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 750.00


All balances are due and payable to NASD Dispute Resolution, Inc.


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**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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Michael E. Curan, Esq.  
Public Arbitrator, Presiding Chair

  
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Signature Date

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Craig Scott Bartlett, Jr.  
Public Arbitrator

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Signature Date

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John B. Ryan  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

May 8, 2001

\_\_\_\_\_  
Date of Service (For NASD office use only)

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Michael E. Curan, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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*Craig Scott Bartlett, Jr.*  
Craig Scott Bartlett, Jr.  
Public Arbitrator

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*4/27/01*  
Signature Date

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John B. Ryan  
Industry Arbitrator

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Signature Date

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May 8, 2001  
Date of Service (For NASD office use only)

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Michael E. Curan, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Craig Scott Bartlett, Jr.  
Public Arbitrator

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Signature Date

  
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John B. Ryan  
Industry Arbitrator

4.20.01  
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Signature Date

May 8, 2001  
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Date of Service (For NASD office use only)