

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Lincoln Adair and Sally Adair (Claimants) vs. Auerbach, Pollack and Richardson, Inc., Mark Rauseo, Robert L. Haag, Andrew W. Haag (Respondents)

Case Number: 99-01491

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Lincoln Adair and Sally Adair, hereinafter collectively referred to as "Claimant(s)": pro se, New York, New York.

Respondents, Auerbach, Pollack & Richardson, Inc. ("Auerbach"), Robert L. Haag ("R. Haag"), Andrew W. Haag ("A. Haag"), hereinafter collectively referred to as "Respondents": Gilbert C. Hoover, IV, Esq., Parker Chapin LLP, New York, New York.

Respondent, Mark Rauseo, hereinafter referred to as "Respondent Rauseo": pro se, Beverly Hills California.

**CASE INFORMATION**

Statement of Claim filed on or about: April 10, 1999.

Claimants signed the Uniform Submission Agreement: April 28, 1999.

Response to Motion and Cross Motion filed by Claimants on or about: July 21, 1999.

Statement of Answer filed by Respondent, Auerbach, R. Haag and A. Haag, on or about: July 14, 1999.

Respondent, Auerbach, signed the Uniform Submission Agreement: July 14, 1999.

Respondent, R. Haag, signed the Uniform Submission Agreement: July 14, 1999.

Respondent, A. Haag, signed the Uniform Submission Agreement: July 14, 1999.

Respondent, Rauseo, did not file a Statement of Answer or the Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract and failure to execute a stop loss order concerning 7,500 shares of the Rollerball IPO stock.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim against Respondents upon which relief can be granted; Respondent Rauseo acted outside the scope of his authority in signing the "memo agreement" and in participating in an illegal course of conduct with the Claimants; Respondents acted in good faith, in accordance

with appropriate industry standards, and in compliance with industry regulations; Claimants' claims are barred, in whole or in part, by the doctrines of assumption of risk and unclean hands; Claimants' claims are barred, in whole or in part, by their own negligence and claims by their failure to mitigate damages; Claimants' damages, if any, are the result of intervening causes, including their own conduct; and, Claimants have failed to state a claim for recovery of punitive damages, as such damages are neither supported by the facts nor permitted by applicable law.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$56,934.00
Attorney's Fees	\$ 5,000.00
Other Costs	\$ 5,000.00
Punitive Damages	\$33,066.00
Other Monetary/Non-Monetary Relief if any:	

Respondents requested dismissal of all claims asserted against them, and such other relief as the arbitrators may deem just and proper:

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

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent, Mark Rauseo, 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 said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent, Mark Rauseo, did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, not having answered the claim, and failing to appear or testify at the hearing, is bound by the determination of the Panel on all issues submitted.

On June 29, 2000, Claimants informed the NASD that they had settled their dispute with Respondents, Auerbach, A. Haag and R. Haag. At the hearing, Mr. Adair informed the Panel that he was only seeking \$20,000.00 in damages from Respondent Rauseo.

### **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. Respondent, Mark Rauseo, is hereby liable and shall pay Claimant \$20,000.00.

2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

May 23, 2000, adjournment by Respondents, Auerbach, A. Haag and R. Haag  
= \$750.00

#### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$	= \$ 750.00
Pre-hearing conference: February 16, 2000	1 session

One (1) Hearing session x \$	= \$ 750.00
Hearing Date: June 30, 2000	1 session
Total Forum Fees	= \$1,500.00

1. The Arbitrator has assessed \$500.00 of the forum fees to Claimants, Lincoln Adair and Sally Adair.
2. The Panel has assessed \$500.00 of the forum fees jointly and severally to Respondents, Auerbach, Pollack & Richardson, Inc., Robert Haag and Andrew Haag.
3. The Panel has assessed \$500.00 of the forum fees to Respondent, Mark Rauseo.

**Fee Summary**

Claimants, Lincoln Adair and Sally Adair, be and hereby is solely liable for:

Initial Filing Fee	= \$225.00
Forum Fees	= \$500.00
Total Fees	= \$725.00
<u>Less payments</u>	<u>= \$975.00</u>
Refund Due Claimants	= \$250.00

Respondent, Auerbach, Pollack & Richardson, Inc., be and hereby is solely liable for:

Member Fees	= \$3,100.00
Adjournment Fee	= \$ 750.00
Total Fees	= \$3,850.00
<u>Less payments</u>	<u>= \$3,850.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondents, Auerbach, Pollack & Richardson, Inc., be and hereby are jointly and severally liable for:

Forum Fees	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	<u>= \$ 600.00</u>
Refund Due Respondent, Auerbach	= \$ 100.00

Respondent, Mark Rauseo, be and hereby is liable for:

Forum Fees	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$ 500.00

All balances are due and payable to NASD Regulation, Inc.

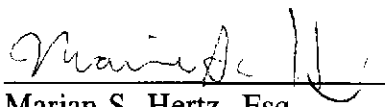
**Concurring Arbitrators' Signatures**

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Marian S. Hertz, Esq.  
Public Arbitrator, Presiding Chair

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

I, **Marian S. Hertz, 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.

  
Marian S. Hertz, Esq.

\_\_\_\_\_  
Melvin Steuerman  
Public Arbitrator

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

I, **Melvin Steuerman**, 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.

\_\_\_\_\_  
Melvin Steuerman

\_\_\_\_\_  
Joseph Kosinsky, MBA  
Industry Arbitrator

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

I, **Joseph Kosinsky, MBA**, 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.

\_\_\_\_\_  
Joseph Kosinsky, MBA

\_\_\_\_\_  
July 17, 2000  
Date of Service (For NASD office use only)

which is my award.

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Marian S. Hertz, Esq.



Melvin Steuerman  
Public Arbitrator

7/13/00

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Signature Date

I, **Melvin Steuerman**, 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.



Melvin Steuerman

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Joseph Kosinsky, MBA  
Industry Arbitrator

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Signature Date

I, **Joseph Kosinsky, MBA**, 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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Joseph Kosinsky, MBA

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July 17, 2000  
Date of Service (For NASD office use only)

which is my award.

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Marian S. Hertz, Esq.

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Melvin Steuerman  
Public Arbitrator


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Signature Date

I, **Melvin Steuerman**, 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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Melvin Steuerman



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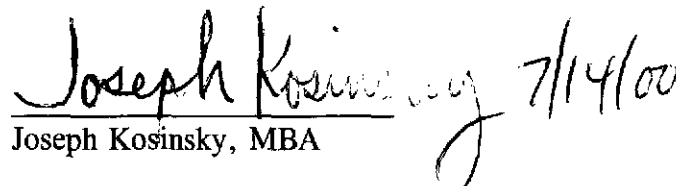
Joseph Kosinsky, MBA  
Industry Arbitrator



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Signature Date

I, **Joseph Kosinsky, MBA**, 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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Joseph Kosinsky, MBA

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July 17, 2000  
Date of Service (For NASD office use only)