

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

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Case No. 99-01953

Name of Respondent

Olcott International Ltd.

**REPRESENTATION OF PARTIES**

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), hereinafter referred to as "Claimant": Keith Olin, Esq. and Bennett Falk, Esq. of Morgan Lewis & Bockius, LLP, Miami, Florida.

For Olcott International Ltd. ("Olcott"), hereinafter referred to as "Respondent": Jeffrey B. Kaplan, Esq. and Michael A. Hanzman, Esq. of Hanzman Criden Chaykin Ponce Heise, PA, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 27, 1999.

Claimant's Uniform Submission Agreement signed on: May 4, 1999 by William Blumetti, District Administrator, on behalf of the firm.

Statement of Answer and Counterclaim filed by Respondent on or about: August 2, 1999.

Respondent's Uniform Submission Agreement signed on: August 10, 1999 by Eliecer Gorenstein, Director, on behalf of the firm.

Reply to Counterclaim filed by Claimant on or about: August 16, 1999.

**CASE SUMMARY**

Claimant alleged the following: This is an action brought by Merrill to recover a debit balance which was created by Respondent Olcott. Olcott is a Bahamian personal holding company formed and funded by Eleicer Gorenstein ("Gorenstein") and his wife Tuny Mizrahi ("Mizrahi"), wealthy Colombians who now reside, as temporary aliens, in the United States. Gorenstein, jumped on the "dot.com" bandwagon, trading in speculative and volatile internet related stocks in clear disregard of the repeated advice from his Merrill broker not to do so. After Gorenstein reneged on his stated acknowledgment of an intention to pay this debt, Merrill brought this collection action.

Unless specifically admitted in its Answer, Respondent denied the allegations contained in the Statement of Claim and asserted the following: As a result of excessive, risky short-term or day trading on margin, Respondent's account at Merrill was literally wiped out in short order. Trading was conducted by a Merrill broker who was totally unsupervised, and who knew that the trading she implemented was totally unsuitable, given Respondent's investment objective and risk tolerance. The result of Merrill's trading not only wiped out Respondent's account equity, it left a debit balance of \$30,193.00 in the account. Further, Respondent

Olcott asserted a counterclaim against Merrill and alleged the following causes of action: breach of fiduciary duty; negligence; and, negligent supervision.

In its reply to the counterclaim, Merrill asserted that the allegations contained in the counterclaim are complete fabrications.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$30,193.00 together with pre-judgment interest, that the arbitration panel assess all costs and forum fees against Respondent and that the counterclaim be dismissed.

Respondent requested a dismissal of the Statement of Claim against it; relief on its counterclaim in an undisclosed amount, pre-judgment interest at the statutory rate, punitive damages, costs, and such other and additional relief deemed appropriate by the arbitration panel.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found liable and shall pay to Claimant the sum of \$30,193.00 plus interest at the rate of 10% per annum from December 31, 1998 to the date of payment of this Award.
2. Claimant's request for costs is denied.
3. Respondent's counterclaim is denied.
4. Respondent's requests for pre-judgment interest, punitive damages and costs are denied.
5. All other requests for relief not specifically addressed herein are 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	= \$1,000.00
Counterclaim filing fee	= \$ 250.00

### **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, the member firm, Merrill, is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

### **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 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 x \$450.00	= \$450.00
Pre-hearing conference date: April 28, 2000	1 session
Two (2) Pre-hearing sessions with the Panel x \$600.00	= \$1,200.00
Pre-hearing conference dates: February 2, 2000	1 session
May 4, 2000	1 session
Six (6) Hearing sessions x \$600.00	= \$3,600.00
Hearing dates: May 8, 2000	2 sessions
May 9, 2000	2 sessions
May 10, 2000	2 sessions
Total Forum Fees	= \$5,250.00

The Panel has assessed \$2,625.00 of the forum fees to Claimant.

The Panel has assessed \$2,625.00 of the forum fees to Respondent.

### **Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$2,400.00
Forum Fees	= \$2,625.00
Total Fees	= \$6,025.00
Less payments	= \$4,000.00
Balance Due NASD Regulation, Inc.	= \$2,025.00

Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Forum Fees	= \$2,625.00
Total Fees	= \$2,875.00
Less payments	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$2,875.00

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

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Arthur J. Leibell, Esq.  
Public Arbitrator/Chairperson

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

\_\_\_\_\_/s/\_\_\_\_\_  
Monica I. Salis, Esq.  
Public Arbitrator

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

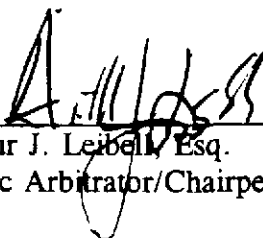
\_\_\_\_\_/s/\_\_\_\_\_  
Bernard L. Loring  
Industry Arbitrator

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

June 22, 2000  
Date of Service (For NASD office use only)

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

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Public Arbitrator/Chairperson

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Signature Date

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Monica I. Salis, Esq.  
Public Arbitrator

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Office of Dispute Resolution

Arbitration No. 99-01953

Award Page 4

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