

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Bill Billitzer, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Inc. and Joseph Meerbaum, (Respondents)

Case Number: 01-00536

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Bill Billitzer, hereinafter referred to as "Claimant": Jay R. McDaniel, Esq., Porzio, Bromberg & Newman, P.C., New York, NY.

Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill"): Ira N. Glauber, Esq., Jaffe & Asher, LLP, New York, NY. Previously represented by: Jeffrey Plotkin, Esq., Eiseman Levine Lehrhaupt & Kakoyiannis, P.C., New York, NY.

Respondent, Joseph Meerbaum ("Meerbaum"): Jeffrey Plotkin, Esq., Eiseman Levine Lehrhaupt & Kakoyiannis, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 31, 2001.

Amended Statement of Claim filed on or about: June 22, 2001.

Claimant signed the Uniform Submission Agreement: January 31, 2001.

Joint Statement of Answer filed by Respondents on or about: June 7, 2001.

Merrill signed the Uniform Submission Agreement: June 6, 2001.

Meerbaum signed the Uniform Submission Agreement: June 4, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; breach of the duties of good faith and loyalty; violations of the standards and rules of the NASD, Inc. and the New York Stock Exchange; misrepresentations; unsuitability; negligence; failure to supervise; breach of contract; and violation of New York's General Business Law section 349. Claimant's claim involved unspecified stocks and options.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state claims upon which relief may be granted; no private right of action exists in favor of a public customer as a result of a member firm's purported violation of the rules of self-regulatory organization; no private right of action exists in favor of a public customer as a result of the member firm's purported breach of its contract with the NASD; Claimant's claims are barred in whole or in part by the applicable statutes of limitation; Claimant's claims are barred in whole or in part by the doctrines of estoppel and ratification; Claimant's claims are barred in whole or in part because Claimant has unclean hands, and pursuant to the doctrine of *in pari delicto*; any losses sustained by Claimant are attributable to market conditions and to Claimant's own investment decisions, not to any action or inaction by Respondents; any losses sustained by Claimant were caused, in whole or in part, by Claimant's own negligence or actions; Respondents are not liable for any damages suffered by Claimant because acts of others constitute independent, intervening, and superseding causes, relieving them of liability; and Claimant failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$600,000.00;
- b. Punitive damages in the amount of \$350,000.00;
- c. Double damages and attorneys' fees under New York law for such acts as constituted fraudulent and/or deceptive practices; and
- d. Costs and disbursements.

Respondents requested that the Panel issue an Award:

- a. Dismissing Claimant's claim with prejudice;
- b. Ordering that the NASD expunge from its CRD system all reference to Claimant's claim; and
- c. Ordering Claimant to pay Respondents their attorneys' fees and costs in defending this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents made a Motion to Dismiss at the end of the last hearing date. The Panel heard argument on the Motion on November 26, 2002 during a telephonic hearing. After the parties finished their argument, the Panel deliberated and granted the Motion, the Claimant having failed to prove his allegations.

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. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 500.00
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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, Merrill Lynch, Pierce, Fenner & Smith Inc. is a party.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Feb. 4 & 5, 2002, adjournment by Merrill	= \$ 1,200.00
Mar. 4 & 5, 2002, adjournment by Merrill	= 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:

Seven (7) Pre-hearing sessions with Panel x \$1,200.00 = \$ 8,400.00

Pre-hearing conferences:	September 5, 2001	1 session
	March 6, 2002	1 session
	May 7, 2002	1 session
	July 17, 2002	1 session
	September 10, 2002	1 session
	September 12, 2002	1 session
	November 26, 2002	1 session

Seven (7) Hearing sessions x \$1,200.00 = \$ 8,400.00

Hearing Dates:	October 10, 2002	2 sessions
	October 11, 2002	1 session
	November 18, 2002	2 sessions
	November 19, 2002	2 sessions

Total Forum Fees = \$16,800.00

1. The Panel has assessed all of the forum fees against Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$16,800.00</u>
Total Fees	= \$17,300.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$15,725.00

2. Merrill is solely liable for:

Member Fees	= \$ 7,100.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 8,300.00
<u>Less payments</u>	<u>= \$ 6,100.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,200.00

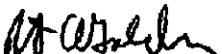
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Peter A. Goldman, Esq.	-	Public Arbitrator, Presiding Chair
Debra Siedman DeWan, Esq.	-	Public Arbitrator
Robert M. Flanagan	-	Non-Public Arbitrator

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.



Peter A. Goldman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Debra Siedman DeWan, Esq.
Public Arbitrator

Signature Date

Robert M. Flanagan
Non-Public Arbitrator

Signature Date

January 7, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

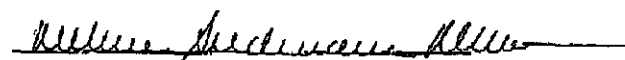
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Signature Date


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Public Arbitrator

1/6/03
Signature Date

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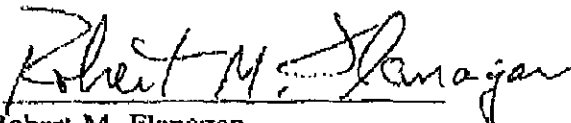
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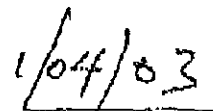
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