
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Emmett A. Herring, Jr. and
Elaine H. Litschgi as Co-Trustees and
Beneficiaries of the Emmett A. Herring,
Jr. Revocable Trust Dated 12/27/91

Case Number: 01-01447

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Melanie A. Graibus n/k/a Melanie A. Rudolph
Lawrence R. Adams

Hearing Site: Tampa, FL

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Emmett A. Herring, Jr. ("Herring") and Elaine H. Litschgi ("Litschgi") as Co-Trustees and Beneficiaries of the Emmett A. Herring, Jr. Revocable Trust Dated 12/27/91, hereinafter collectively referred to as "Claimants": William J. Schifino, Jr., Esq. and Brenda M. Combs, Esq., Williams Schifino Mangione & Steady, P.A., Tampa, FL.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Melanie A. Graibus n/k/a Melanie A. Rudolph ("Rudolph"), and Lawrence R. Adams ("Adams"), hereinafter collectively referred to as "Respondents": Neil S. Baritz, Esq., Baritz & Colman, LLP, Boca Raton, FL.

CASE INFORMATION

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

Claimant Herring, as Co-Trustee and Beneficiary of the Emmett A. Herring, Jr. Revocable Trust Dated 12/27/91, signed the Uniform Submission Agreement: March 3, 2001.

Claimant Litschgi, as Co-Trustee and Beneficiary of the Emmett A. Herring, Jr. Revocable Trust Dated 12/27/91, signed the Uniform Submission Agreement: February 22, 2001.

Respondents' Statement of Answer filed on or about: June 4, 2001.

Respondent MLPFS signed the Uniform Submission Agreement: August 3, 2001.

Respondent Rudolph signed the Uniform Submission Agreement: August 2, 2001.

Respondent Adams signed the Uniform Submission Agreement: August 2, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; and, unsuitability. The causes of action relate to the purchase of unspecified securities products in Claimants' accounts and allegations of unsuitable recommendations resulting in a portfolio that was not properly diversified or allocated.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of \$500,000.00, interest, costs, attorneys' fees, punitive damages, and such other and further relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested dismissal of the Statement of Claim, attorneys' fees, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties settled the issues presented in their pleadings on January 9, 2003. As part of the settlement, Claimants agreed that the individual Respondents' Forms U-4 should have all references to this arbitration expunged therefrom, based on a variety of factors, including, but not limited to, their discovery of the absence of specific evidence of wrongdoing. The only issue presented to the Panel was this Stipulated Award relating to expungement.

On or about March 21, 2003, Claimants advised NASD Dispute Resolution that the parties had settled the above-referenced matter.

On or about December 23, 2004, Respondents filed a motion for entry of a Stipulated Award ("Motion for Stipulated Award") seeking expungement of all references to the above-captioned arbitration or to any customer complaint filed by Claimants from Respondents Rudolph and Adams' registration records maintained by the NASD Central Registration Depository ("CRD").

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the Motion for Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The above styled case is dismissed in its entirety. The parties shall bear their respective attorneys' fees and costs.

The Panel finds that all references to the above-styled case should be expunged from the individual Respondents' CRD records based on the defamatory nature of the disputed information in the allegations of the Statement of Claim, and that the individual Respondents shall be solely responsible for all fees and costs associated with said expungement process, including attorneys' fees.

Accordingly, the Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Rudolph and Adams' registration records maintained by the NASD CRD based on the defamatory nature of the disputed information in the allegations of the Statement of Claim, with the understanding that pursuant to NASD Notices to Members 99-09

and 99-54, Respondents Rudolph and Adams must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 300.00

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(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPFS is a member firm and party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00
Total Member Fees	= \$4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 25-27, 2002, adjournment by Claimants = \$1,125.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: January 7, 2002	1 session

Total Forum Fees = \$1,125.00

The Panel has assessed \$562.50 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 1,987.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	<u>= \$ 4,600.00</u>
Total Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$ 4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

James H. Frank, Esq.	-	Public Arbitrator, Presiding Chairperson
Boyd Stagmer, CPA, CFP	-	Public Arbitrator
John W. Platt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
James H. Frank, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Boyd Stagmer, CPA, CFP
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

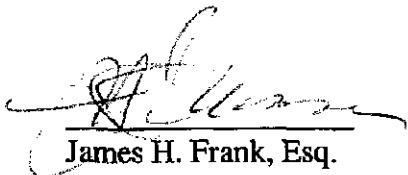
I have no problem with the settlement agreement between the parties, but I am unable to approve the expungement of a complaint against the brokers. It should first be considered that there was no hearing in this case and the Panel never had the opportunity to see or hear the individual Respondents. I do not believe it is fair to come to a Panel and ask them for a ruling concerning the actions of a person without ever letting the Panel meet that person. It is tough enough to judge people, but without seeing or hearing anything other than reading the complaint and answer I feel that is asking too much. It has always been my opinion that what I do as an arbitrator has some importance and I take the oath of arbitrator very seriously each time I sign it. Further, I would like to point out that if a complaint is brought against a broker, there has to be a reason and some customer is upset enough to have gone so far as to bring an arbitration. That fact should be on the broker's record as well as the result of the complaint, guilty, innocent, or settled. Our record is what we have to define our "doing business" and it should be not only accurate, it should be complete. Given my feelings on this subject, I can only take a position of dissent unless a hearing is held and I know the facts.

/s/
John W. Platt
Non-Public Arbitrator

Signature Date

February 8, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures



James H. Frank, Esq.
Public Arbitrator, Presiding Chairperson

FEB 02 2005

Signature Date

Boyd Stagmer, CPA, CFP
Public Arbitrator

Signature Date

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