
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant
David Rubin and Judy Rubin

Case Number: 01-02264

Name of Respondent
Merrill Lynch, Pierce Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

David Rubin and Judy Rubin, hereinafter referred to as "Claimant": Alan Foxman, Esq., The Law Offices of Alan J. Foxman, P.A., Boca Raton, Florida.

Merrill Lynch, Pierce Fenner & Smith, Inc., hereinafter referred to as "Respondent MLPFS": Robert E. Goldberg, Senior Counsel, Respondent MLPFS, New York, New York. On or about August 14, 2001, Richard L. Martens, Esq., Jason S. Haselkorn, Esq. and Charles L. Pickett, Esq., Law Offices of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida, appeared as counsel for Respondent MLPFS.

CASE INFORMATION

Statement of Claim filed on or about: April 26, 2001.

Claimant signed the Uniform Submission Agreement: May 4, 2001.

Statement of Answer and Affirmative Defenses filed by Respondent MLPFS on or about: August 14, 2001.

Respondent MLPFS signed the Uniform Submission Agreement: August 8, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: 1) negligence; 2) breach of fiduciary duty; 3) violation of Florida Statutes 517; 4) fraud and misrepresentation; and 5) breach of contract. The causes of action relate to the manner in which Respondent MLPFS handled the Claimant's deposit of 50,000 shares of Hydrogene Corporation common stock held in joint tenancy, and Claimant's request that Respondent MLPFS have the restrictive legend removed and sell the stock as expeditiously as possible.

Unless specifically admitted in its Answer, Respondent MLPFS denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages between \$50,000.00 and \$81,500.00; 2) interest; 3) costs; and 4) attorneys' fees.

Respondent requested dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 10, 2002, Respondent filed its Motion in Limine to Bar Evidence of Separate Transactions. On or about May 13, 2002, Claimant filed a response and opposition to Respondent's motion. On or about May 17, 2002, Respondent filed its written reply to Claimant's response. On or about May 20, 2002, the undersigned arbitrators (the "Panel") denied Respondent's motion.

On or about May 3, 2002, Claimant filed a Motion to Allow Telephone Testimony. On or about May 20, 2002, the Panel approved the procedure of telephone testimony for witness Richard Rubin.

On or about May 10, 2002, Respondent filed its Motion for Leave to Present Telephonic Testimony at Final Hearing. On or about May 13, 2002, Claimant filed a response to the motion. On or about May 17, 2002, Respondent filed its written reply to Claimant's response. On or about May 20, 2002, the Panel approved the procedure of telephone testimony for witnesses Pauline Getz, Winifred Faupel and Alan Rashes, and the Panel denied the procedure of telephone testimony for Joe Cassidy.

At the evidentiary hearing, the Panel: 1) accepted Claimant's motion to amend their damages claim to a sum in between \$50,000.00 and \$81,500.00; 2) denied Claimant's motion to disallow cross examination of witness Robert Rubin; 3) granted Claimant's motion to disallow evidence of lawsuits and news articles pertaining to Hydrogene and Charles Kallman; 4) denied Respondent's motion for a directed verdict and to dismiss; and 5) approved Respondent's motion requiring Claimant to produce evidence.

AWARD

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

1. All claims are denied in their entirety.
2. Claimant's request for attorneys' fees is denied.
3. All other relief requested and not expressly granted is denied.

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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent MLPFS is a member firm and is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments fees 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.

There were no injunctive relief fees 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00

Pre-hearing conference: January 28, 2002 1 session
May 20, 2002 1 session

Ten (10) Hearing sessions @ \$1,125.00/session = \$11,250.00

Hearings: May 28, 2002 2 sessions
May 29, 2002 2 sessions
May 30, 2002 2 sessions
July 29, 2002 2 sessions
July 30, 2002 2 sessions

Total Forum Fees = \$13,500.00

The Panel has assessed forum fees in the amount of \$6,750.00 to Claimant.
The Panel has assessed forum fees in the amount of \$6,750.00 to Respondent MLPFS.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$6,750.00
Total Fees	= \$7,050.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$5,625.00

Respondent MLPFS is solely liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$11,350.00
<u>Less payments</u>	<u>= \$ 2,100.00</u>
Balance Due NASD Dispute Resolution	= \$ 9,250.00

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

ARBITRATION PANEL

<i>Perry Phillips</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Irving Wolinsky, DDS</i>	-	<i>Public Arbitrator</i>
<i>Michele Y. Garelick</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Perry Phillips
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Irving Wolinsky, DDS
Public Arbitrator

Signature Date

NASD Dispute Resolution
Arbitration No. 01-02264
Award Page 5 of 5

/s/

Michele Y. Garelick
Non-Public Arbitrator

Signature Date

August 20, 2002

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 01-02264
Award Page 4 of 5

The Panel has assessed forum fees in the amount of \$6,750.00 to Claimant.
The Panel has assessed forum fees in the amount of \$6,750.00 to Respondent MLPFS.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$6,750.00
Total Fees	= \$7,050.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$5,625.00

Respondent MLPFS is solely liable for:

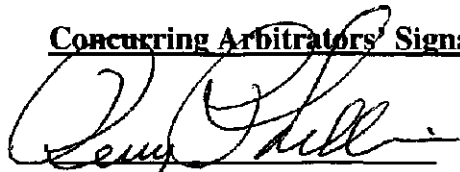
Member Fees	= \$ 4,600.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$11,350.00
<u>Less payments</u>	<u>= \$ 2,100.00</u>
Balance Due NASD Dispute Resolution	= \$ 9,250.00

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

ARBITRATION PANEL

Perry Phillips	-	Public Arbitrator, Presiding Chairperson
Irving Wolinsky, DDS	-	Public Arbitrator
Michele Y. Garelick	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Perry Phillips
Public Arbitrator, Presiding Chairperson

8/14/02
Signature Date

Irving Wolinsky, DDS
Public Arbitrator

Signature Date

The Panel has assessed forum fees in the amount of \$6,750.00 to Claimant.
The Panel has assessed forum fees in the amount of \$6,750.00 to Respondent MLPPS.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$6,750.00
Total Fees	= \$7,050.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$5,625.00

Respondent MLPPS is solely liable for:

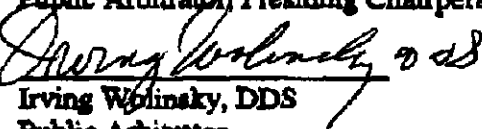
Member Fees	= \$ 4,600.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$11,350.00
<u>Less payments</u>	<u>= \$ 2,100.00</u>
Balance Due NASD Dispute Resolution	= \$ 9,250.00

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

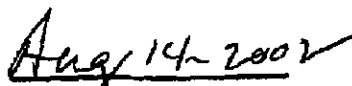
ARBITRATION PANEL

Perry Phillips	-	Public Arbitrator, Presiding Chairperson
Irving Wolinsky, DDS	-	Public Arbitrator
Michelle Y. Garelick	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Perry Phillips
Public Arbitrator, Presiding Chairperson

Irving Wolinsky, DDS
Public Arbitrator

Signature Date


Signature Date

NASD Dispute Resolution

Arbitration No. 01-02264

Award Page 5 of 5

Michele Y. Gardlick

Michele Y. Gardlick
Non-Public Arbitrator

8/19/02

Signature Date

Date of Service (For NASD Dispute Resolution use only)