

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Cosmo L. Bordonaro, the Cosmo Bordonaro Basic IRA, the Cosmo Bordonaro IRA, and the Cosmo Bordonaro IRA Rollover, (Claimants) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Louis Telerico, (Respondents)

Case Number: 01-02610

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimants, Cosmo L. Bordonaro, the Cosmo Bordonaro Basic IRA, the Cosmo Bordonaro IRA, and the Cosmo Bordonaro IRA Rollover, hereinafter collectively referred to as "Claimants": Anthony J. Hartman, Esq., Hermann, Cahn & Schneider, Cleveland, OH.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Louis Telerico ("Telerico"), hereinafter collectively referred to as "Respondents": Byron S. Krantz, Esq., Kohrman Jackson & Krantz, PLL, Cleveland, OH. Previously represented by: Marianne Bretton-Granatoor, Esq., Director & Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 15, 2001.

Amended Statement of Claim filed on or about: September 10, 2001.

Claimants signed the Uniform Submission Agreement: May 15, 2001.

Claimants signed the Revised Uniform Submission Agreement: September 10, 2001.

Joint Statement of Answer filed by Respondents on or about: July 6, 2001.

Joint Statement of Answer to Amended Statement of Claim filed by Respondents on or about: December 3, 2001.

Merrill signed the Uniform Submission Agreement.

Telerico signed the Uniform Submission Agreement: June 7, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; negligence; respondeat superior; failure to supervise; excessive trading; breach of written

contract; and breach of third-party beneficiary contract. Claimants' claim involved unspecified financial products.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: Claimants fails to state a claim upon which relief may be granted; Claimants have irreparably prejudiced and damaged the instant proceedings through the introduction of hearsay, irrelevant, and other inadmissible materials in the Amended Statement of Claim; Claimants suffered no damages by reason of the acts complained of in the Amended Statement of Claim; Claimants' claims are barred by the doctrines of estoppel, ratification, and waiver; Claimants' claims are barred by the doctrines of contributory and comparative negligence and assumption of risk; Respondents acted properly and in good faith at all times with respect to Claimants' accounts; some or all of Claimants' claims are barred by the applicable statutes of limitations; all transactions recommended to and made for or on behalf of Claimants were suitable for Claimants and were in accordance with Claimants' stated investment objectives and financial condition; Claimants' claims are barred in whole or in part by the doctrine of laches; Claimants have failed to plead fraud with particularity; Claimants have failed to allege scienter with requisite particularity; Claimants failed to mitigate their damages; Claimants' claims are barred in whole or in part by the terms of their customer agreements; Claimants' claims are barred in whole or in part by the express terms of the Financial Foundation Reports prepared for Claimants' accounts; to the extent Claimants purport to seek damages with respect to any transactions, conduct, or alleged wrongs which occurred previously, such claims are barred by the applicable statutes of limitation including Ohio Revised Code 17007.43 and/or the eligibility requirement set forth in Section 10304 of the NASD Code of Arbitration Procedure; Claimants failed to exercise due diligence, were reckless, and/or were negligent in the supervision of their own financial affairs; all transactions recommended to and made for or on behalf of Claimants were suitable for and in accordance with Claimants' stated investment objectives and financial condition; Claimants directed, approved, and/or authorized each and every transaction for their accounts which is complained of, and/or ratified, accepted, acquiesced, and confirmed in all respects such transactions; Claimants are not entitled to, nor is the Panel empowered to, an Award of attorneys' fees, punitive damages, interest, or the costs of the instant proceeding; and to the extent Claimants seek damages for an alleged violation of the Rules of the NYSE, the NASD, or any other self-regulatory organization, Claimants fail to state a claim upon which relief may be granted because an alleged violation of the rules of any self-regulatory agency does not give rise to a private right of action.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$395,000.00 representing trading losses and lost opportunity damages, plus reimbursement of commissions, fees, and excess margin interest paid as a result of Respondents' excessive trading in their accounts. Claimants also requested statutory interest of 10% per annum from the date the accounts were closed, plus costs and attorneys' fees.

Respondents requested that Claimants' claims be dismissed, and that they be awarded their costs, expenses, and attorneys' fees incurred in association with their defense of this matter.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' 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	= \$ 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 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	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

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 Panel x \$1,125.00		= \$1,125.00
Pre-hearing conference:	February 4, 2002	1 session
Six (6) Hearing sessions x \$1,125.00		= \$6,750.00
Hearing Dates:	August 26, 2002	2 sessions
	August 27, 2002	2 sessions
	August 28, 2002	2 sessions
<hr/> Total Forum Fees		= \$7,875.00

The Panel has assessed all of the forum fees jointly and severally against Claimants.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$7,875.00
<hr/> Total Fees	= \$8,175.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$6,750.00

2. Merrill be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$5,200.00
Refund Due Merrill	= \$ 600.00

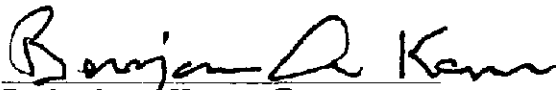
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Benjamin A. Kerner, Esq.	-	Public Arbitrator, Presiding Chair
Michael L. King	-	Public Arbitrator
John P. McGinty	-	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.



Benjamin A. Kerner, Esq.
Public Arbitrator, Presiding Chair

9/27/02
Signature Date

Michael L. King
Public Arbitrator

Signature Date

John P. McGinty
Non-Public Arbitrator

Signature Date

October 4, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Benjamin A. Kerner, Esq.	-	Public Arbitrator, Presiding Chair
Michael L. King	-	Public Arbitrator
John P. McGinty	-	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.

Benjamin A. Kerner, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Michael L. King
Public Arbitrator

Sept. 27, 2002

Signature Date

John P. McGinty
Non-Public Arbitrator

Signature Date

October 4, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Benjamin A. Kerner, Esq.	-	Public Arbitrator, Presiding Chair
Michael L. King	-	Public Arbitrator
John P. McGinty	-	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.

Benjamin A. Kerner, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michael L. King
Public Arbitrator

Signature Date


John P. McGinty
Non-Public Arbitrator


Signature Date

October 4, 2002
Date of Service (For NASD Dispute Resolution use only)