
Stipulated Award

NASD

In the Matter of the Arbitration Between:

Name of the Claimant
Elizabeth Frey Banks

Case Number: 01-03173

Names of the Respondents
Bernard G. Adair and Merrill Lynch, Pierce,
Fenner & Smith, Inc.

Hearing Site: Boca Raton, FL

REPRESENTATION OF PARTIES

For Elizabeth Frey Banks, hereinafter referred to as "Claimant": Darren C. Blum, Esq., Darren C. Blum, P.A., Plantation, FL.

For Bernard G. Adair ("Adair") and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter collectively referred to as "Respondents": Donna Levy, Esq., Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, FL.

CASE INFORMATION

Statement of Claim filed on or about: June 14, 2001.

Claimant signed the Uniform Submission Agreement: May 17, 2001.

Statement of Answer filed by Respondents on or about: September 28, 2001.

Respondent Adair signed the Uniform Submission Agreement: July 31, 2001.

Respondent Merrill Lynch did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; breach of contract; negligent supervision; negligent hiring and retention of employees; fraud; and a violation of Section 517.301, Florida Statutes.

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

RELIEF REQUESTED

Claimant requested compensatory damages of \$300,000.00, plus interest at statutory rate, attorney's fees, punitive damages, costs, rescission, and other such relief deemed just and proper.

Respondents requested that the Statement of Claim be dismissed, attorney's fees, costs, and an order to expunge

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all references of this matter from Respondent Adair's NASD Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Merrill Lynch did not file with NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and is bound by the determination of the undersigned arbitrator (the "Arbitrator") on all issues submitted.

On or about March 22, 2002, the parties filed a Stipulation to Dismiss and Expunge Respondent Adair's NASD CRD records.

AWARD

After considering the parties' submissions and the Stipulation to Dismiss and Expunge Respondent Adair's NASD CRD records, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's withdrawal of her claims with prejudice is accepted, and the Respondents are dismissed from this matter.
2. The Arbitrator recommends the expungement of all references to the above captioned arbitration from Respondent Adair's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Adair must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.
3. Any other claims asserted by Claimant are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD 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. Accordingly, Respondent Merrill Lynch is assessed:

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 200.00

Adjournment Fees

Adjournment fees were not assessed in this matter.

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.

Injunctive relief fees were not assessed in this matter.

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.

Forum fees were not assessed in this matter.

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 in this matter.

Fee Summary**1. Claimant is solely liable for:**

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD</u>	= \$ 0.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 1,700.00
<u>Total Fees</u>	= \$ 1,700.00
<u>Less payments</u>	= \$ 1,500.00
<u>Balance Due NASD</u>	= \$ 200.00

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

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ARBITRATOR

Howard Tescher, Esq.

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Non-Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

/s/

7/24/02

Howard Tescher, Esq.

Non-Public Arbitrator, Presiding Chairperson

Signature Date

7/25/02

Date of Service (For NASD office use only)

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ARBITRATOR

Howard Tescher, Esq.

Non-Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

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