

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Benedict M. Charlins and Nancy J. Charlins JTWROS, Charlins & Assoc. Inc. Defined Benefit Plan, Ben M. Charlins IRRA, Nancy J. Charlins IRA, Benedict M. Charlins IRA, Benedict M. Charlins SEP, and Charlins & Associates, Inc. Employee Profit Sharing Plan (Claimants) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., and Louis A. Telerico (Respondents)

Case Number: 01-06231

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Claimants, Benedict M. Charlins and Nancy J. Charlins JTWROS, Charlins & Assoc. Inc. Defined Benefit Plan, Ben M. Charlins IRRA, Nancy J. Charlins IRA, Benedict M. Charlins IRA, Benedict M. Charlins SEP, and Charlins & Associates, Inc. Employee Profit Sharing Plan, hereinafter referred to as "Claimants": Anthony J. Hartman, Esq., Hermann, Cahn & Schneider LLP, Cleveland, OH.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Louis A. Telerico ("Telerico"), hereinafter collectively referred to as "Respondents": Byron S. Krantz, Esq., Kohrman Jackson & Krantz, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: November 16, 2001.

Claimant Benedict M. Charlins and Nancy J. Charlins JTWROS signed the Uniform Submission Agreement: November 4, 2001.

Claimant Charlins & Assoc. Inc. Defined Benefit Plan signed the Uniform Submission Agreement: November 3, 2001.

Claimant Ben M. Charlins IRRA signed the Uniform Submission Agreement: November 3, 2001.

Claimant Nancy J. Charlins IRA signed the Uniform Submission Agreement: November 3, 2001.

Claimant Benedict M. Charlins IRA signed the Uniform Submission Agreement: November 3, 2001.

Claimant Benedict M. Charlins SEP signed the Uniform Submission Agreement: November 3, 2001.

Claimant Charlins & Associates, Inc. Employee Profit Sharing Plan signed the Uniform Submission Agreement: November 3, 2001.

Joint Statement of Answer filed by Respondents on or about: January 15, 2002.
Respondent Merrill did not sign the Uniform Submission Agreement.
Respondent Telerico did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; excessive trading; breach of written contract; breach of third-party beneficiary contract; respondeat superior and failure to supervise. Claimants' claim involved the various undisclosed securities and a variety of Holding Company Depositary Receipts (HOLDRs).

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 in the amount of \$1,500,000.00, reimbursement of the commissions, fees, and excess margin interest they paid, punitive damages in the amount of \$1,000,000.00, statutory interest at 10% per annum, the cost and fees of the NASD for these proceedings, and reasonable attorneys fees.

Respondents requested judgment on the Statement of Claim and an award of all costs, expenses and attorney fees incurred by them in association with their defense of this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing are bound by the determination of the Panel on all issues submitted.

At the close of Claimants' case at the hearing in this matter, Respondents filed a Motion to Dismiss. The Panel denied the motion.

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. The Panel found no evidence of the following: breach of fiduciary duty; negligence; excessive trading; breach of written contract; breach of third-party beneficiary contract; respondeat superior; or failure to supervise. The Panel found that Claimants' were aware of the risks, and their losses were part of the general decline in the stock market. Therefore, Claimants' claims are hereby denied in their entirety.
2. The parties shall bear their own costs, including attorneys' fees.
3. Any and all relief not specifically addressed herein, including punitive damages is 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Merrill is a party.

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

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:

Three (3) Pre-hearing sessions with Panel @ \$1,200.00	= \$3,600.00
Pre-hearing conferences:	
May 17, 2002	1 session
November 19, 2002	1 session
December 17, 2002	1 session

Eighteen (18) Hearing sessions with Panel @ \$1,200.00 = \$21,600.00

Hearing Dates:	January 13, 2003	2 sessions
	January 14, 2003	2 sessions
	January 15, 2003	2 sessions
	January 16, 2003	2 sessions
	January 17, 2003	2 sessions
	July 22, 2003	2 sessions
	July 23, 2003	2 sessions
	July 24, 2003	2 sessions
	July 25, 2003	2 sessions

Total Forum Fees = \$25,200.00

1. The Panel has assessed \$12,600.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$12,600.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$12,600.00
Total Fees	= \$13,100.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$11,400.00

2. Respondent Merrill is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
Total Fees	= \$ 7,600.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill and Telerico are jointly and severally liable for:

<u>Forum Fees</u>	= \$12,600.00
Total Fees	= \$12,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$12,600.00

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

ARBITRATION PANEL

Thomas R. Skulins, Esq.	-	Public Arbitrator, Presiding Chair
John S. Weisheit	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, that I am the individual described herein and who executed this instrument in which is my award.

Thomas R. Skulins

Thomas R. Skulins, Esq.
Public Arbitrator, Presiding Chairperson

8-26-03

Signature Date

John S. Weisheit
Public Arbitrator

Signature Date

Bert Cliff
Non-Public Arbitrator

Signature Date

September 2, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


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John S. Weisheit	-	Public Arbitrator
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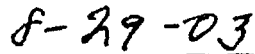
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