
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Richard Laub and Nancy Laub

Case No.: 02-02312

(consolidated with 02-00891)

Names of the Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Ralph M. Byer

Hearing Site: Boca Raton, Florida

In the Matter of the Arbitration Between:

Name of the Claimant

Alfred C. Laub

Case No.: 02-00891

(consolidated with 02-02312)

Names of the Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Ralph M. Byer

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Richard Laub, Nancy Laub and Alfred C. Laub, hereinafter collectively referred to as "Claimants": Debra Brewer Hayes, Esq., Woska and Hayes, LLP, Kingwood, Texas.

For Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Ralph M. Byer ("Byer"), hereinafter collectively referred to as "Respondents": Keith Olin, Esq. and Jill Dockson, Esq., Bressler Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

The following pleadings were filed in **Case No. 02-02312**:

Statement of Claim filed on or about: April 22, 2002.

Claimants Richard Laub and Nancy Laub signed the Uniform Submission Agreement on: February 28, 2002.

Statement of Answer filed by Respondents on or about: July 3, 2002.

Respondent MLPFS signed the Uniform Submission Agreement on or about: June 11, 2002.

Respondent Byer signed the Uniform Submission Agreement on or about: July 3, 2002.

Motion to Enforce Settlement Agreement filed by Respondents on or about: October 2, 2005.

Opposition to Respondents' Motion to Enforce Settlement Agreement filed by Claimants on or about:

October 17, 2005.

Revised Opposition to Respondents' Motion to Enforce Settlement Agreement filed by Claimants on or about: October 18, 2005.

The following pleadings were filed in **Case No. 02-00891**:

Statement of Claim filed on or about: February 13, 2002.

Claimant Alfred Laub signed the Uniform Submission Agreement: January 28, 2002.

Statement of Answer filed by Respondents on or about: May 31, 2002.

Respondent MLPFS signed the Uniform Submission Agreement: May 8, 2002.

Respondent Byer signed the Uniform Submission Agreement: May 30, 2002.

CASE SUMMARY

In **Case No. 02-02312**, Claimants Richard Laub and Nancy Laub asserted the following causes of action: 1) breach of contract; 2) failure to supervise; and 3) breach of fiduciary duty. The causes of action relate to Claimants' investments in various securities, including but not limited to, AT&T Wireless Corp., Intel Corp., Corning, Inc., America On Line, Inc., Biotech Hldrs, Dell, Inc., Lucent Technologies, Inc., Microsoft, Cisco Systems, Inc. and Sun Microsystems.

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

In **Case No. 02-00891**, Claimant Alfred Laub asserted the following causes of action: 1) breach of fiduciary duty; 2) failure to supervise; and 3) breach of contract. The causes of action relate to Claimant's investments in various securities, including but not limited to, AT&T Corp., Cisco Systems, Inc., Intel Corp., Corning, Inc., Pfizer, Inc. and Tyco International Ltd.

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

RELIEF REQUESTED

In **Case No. 02-02312**, Claimants Richard Laub and Nancy Laub requested: 1) compensatory damages in an amount not less than \$400,000.00; 2) interest; 3) forum fees; 4) costs; 5) disbursements; 6) reasonable attorneys' fees; and 7) such other and further relief as is just and proper.

Respondents requested: 1) that the Panel deny Claimants' Statement of Claim in its entirety and assess the costs of these proceedings against Claimants; and 2) expungement of this matter from the NASD Central Registration Depository ("CRD") records of Respondent Byer.

In **Case No. 02-00891**, Claimant Alfred Laub requested: 1) compensatory damages in an amount not less than \$300,000.00, 2) interest; 3) forum fees; 4) costs; 5) disbursements; 6) reasonable attorneys'

fees; and 7) such other and further relief as is just and proper.

Respondents requested: 1) that the Panel deny Claimant's Statement of Claim in its entirety; and 2) assess the costs of these proceedings against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

In NASD Case No. 02-02312 and on or about June 27, 2002, Respondents filed their Motion to Change Venue from New York, New York to Boca Raton, Florida. On or about July 10, 2002, Claimants Richard Laub and Nancy Laub filed their Affirmation in Opposition to Motion For Change of Venue. On or about February 24, 2003, the Panel granted Respondents' Motion to Change Venue from New York, New York to Boca Raton, Florida.

In NASD Case No. 02-02312 and on or about January 29, 2004, Claimants Richard Laub, Nancy Laub and Alfred Laub filed an unopposed motion to consolidate NASD Case No. 02-00891 and NASD Case No. 02-02312. On or about February 17, 2004, the Panel granted the motion and consolidated NASD Case No. 02-00891 and NASD Case No. 02-02312.

In NASD Case No. 02-02312 and on or about July 21, 2005, the parties notified NASD Dispute Resolution that they had settled this matter and that a Stipulated Award will be forthcoming.

In NASD Case No. 02-02312 and on or about March 20, 2006, the Panel denied Respondents' Motion to Enforce Settlement Agreement and scheduled evidentiary hearing dates for November 28, 2006 – December 1, 2006.

At the evidentiary hearing conducted on January 23, 2007, Respondent Byer renewed his motion to expunge the above referenced arbitration proceeding from his CRD records. Claimants did not oppose this request.

The parties 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 Richard Laub, Nancy Laub and Alfred Laub's claims are denied.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Byer's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Byer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 3) Any and all claims for relief not specifically addressed herein, including Claimants' request for attorneys' fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed in **Case No. 02-02312**:

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 MLPFS is a member and a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 2 – 4, 2003, adjournment requested by Respondent MLPFS = \$ 1,125.00

January 12-13, 2006, adjournment requested by the Claimant = \$ 1,125.00

March 22-23, 2006, adjournment requested by Respondents = \$ 1,125.00

The Panel has assessed \$1,687.50 of the adjournment fees to Claimants, jointly and severally.

The Panel has assessed \$1,687.50 of the adjournment fees to Respondents, jointly and severally.

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:

January 12-13, 2006, joint adjournment requested by parties on January 11, 2006 = \$ 300.00

The Panel has assessed \$150.00 of the three-day cancellation fees to Claimants, jointly and severally.

The Panel has assessed \$150.00 of the three-day cancellation fees to Respondents, jointly and severally.

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 in Case No. 02-02312.

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 a single arbitrator @ \$450.00 per session	= \$	900.00
Pre-hearing conferences: September 29, 2003	1 session	
October 20, 2003	1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$	2,250.00
Pre-hearing conferences: April 1, 2003	1 session	
April 2, 2003	1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00 per session	= \$	1,200.00
Pre-hearing conference: November 29, 2005	1 session	

Eleven (11) Hearing sessions @ \$1,200.00 per session	= \$13,200.00	
Hearing Dates: March 20, 2006	1 session	
November 28, 2006	2 sessions	
November 29, 2006	2 sessions	
November 30, 2006	2 sessions	
December 1, 2006	2 sessions	
January 23, 2007	2 sessions	

Total Forum Fees	= \$17,550.00
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The Panel has assessed total forum fees of \$17,550.00 to Claimants, jointly and severally.

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 in Case No. 02-02312.

Pursuant to the Code, the following fees are assessed in **Case No. 02-00891**:

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 MLPFS is a member and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 28, 2003 - June 4, 2003, adjournment requested by Respondents = \$1,125.00

The Panel has assessed total adjournment fees of \$1,125.00 to Respondents, jointly and severally.

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:

There were no three-day cancellation fees assessed during these proceedings in Case No. 02-00891.

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 in Case No. 02-00891.

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 per session	= \$2,250.00
Pre-hearing conferences: November 12, 2002	1 session
October 22, 2003	1 session

Total Forum Fees	= \$2,250.00
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The Panel has assessed total forum fees of \$2,250.00 to Claimant Alfred Laub.

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 in Case No. 02-00891.

Fee Summary

In **Case No. 02-02312:**

Claimants Richard Laub and Nancy Laub are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Claimants Richard Laub, Nancy Laub and Alfred Laub are jointly and severally liable for:

Adjournment Fees	= \$ 1,687.50
Three Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$17,550.00
Total Fees	= \$19,387.50
Less payments	= \$ 1,305.35
Balance Due NASD Dispute Resolution	= \$18,082.15

Respondent MLPFS is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fees	= \$ 1,687.50
Three-Day Cancellation Fee	= \$ 150.00
Total Fees	= \$ 1,837.50
Less payments	= \$ 1,837.50
Balance Due NASD Dispute Resolution	= \$ 0.00

In Case No. 02-00891

Claimant Alfred Laub is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent MLPFS is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATION PANEL

<i>Myron E. Levenson</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Robert A. Sauerberg</i>	-	<i>Public Arbitrator</i>
<i>Nicholas A. Natale</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

_____/s/_____
Myron E. Levenson
Public Arbitrator, Presiding Chairperson

January 30, 2007
Signature Date

/s/
Robert A. Sauerberg
Public Arbitrator

January 30, 2007
Signature Date

/s/
Nicholas A. Natale
Non-Public Arbitrator

January 30, 2007
Signature Date

January 30, 2007
Date of Service (For NASD Dispute Resolution office use only)

Respondents are jointly and severally liable for:

Adjournment Fees	= \$ 1,687.50
Three-Day Cancellation Fee	= \$ 150.00
Total Fees	= \$ 1,837.50
Less payments	= \$ 1,837.50
Balance Due NASD Dispute Resolution	= \$ 0.00

In Case No. 02-00891

Claimant Alfred Laub is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent MLPFS is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

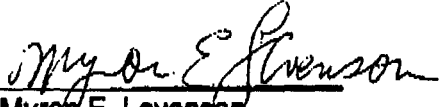
Adjournment Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATION PANEL

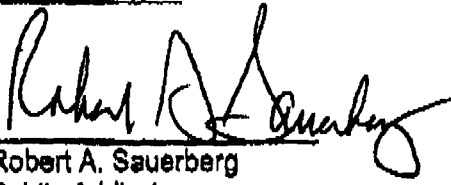
Myron E. Levenson	-	Public Arbitrator, Presiding Chairperson
Robert A. Sauerberg	-	Public Arbitrator
Nicholas A. Natale	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Myron E. Levenson
Public Arbitrator, Presiding Chairperson


Signature Date

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(Consolidated w/02-00891)
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Robert A. Sauerberg
Public Arbitrator

1/30/07

Signature Date

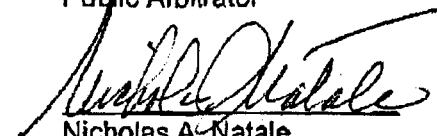
Nicholas A. Natale
Non-Public Arbitrator

Signature Date

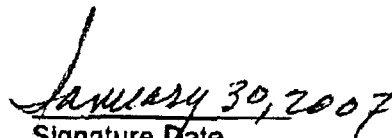
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Arbitration No. 02-02312
(Consolidated w/02-00891)
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Robert A. Sauerberg
Public Arbitrator


Nicholas A. Natale
Non-Public Arbitrator

Signature Date


Signature Date

Date of Service (For NASD Dispute Resolution office use only)