

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Joe and Judy Gergely, JTWROS
Joe Gergely, IRA
Judy Gergely, IRA

Case Number: 02-04731

Name of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
J. David Jones

Hearing Site: Raleigh, NC

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

REPRESENTATION OF PARTIES

Claimants, Joe and Judy Gergely, JTWROS, Joe Gergely, IRA and Judy Gergely, IRA, hereinafter referred to as "Claimants", were represented by Sarah G. Anderson, Esq., Clawson & Staubes, LLC, Charleston, South Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPF") and J. David Jones ("Jones"), hereinafter collectively referred to as "Respondents", were represented by Terry R. Weis, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on August 12, 2002.

Claimants signed the Uniform Submission Agreement on July 22, 2002.

Statement of Answer filed by Respondents on November 1, 2002.

A representative of Respondent MLPF signed the Uniform Submission Agreement on October 16, 2002.

Respondent Jones signed the Uniform Submission Agreement on October 16, 2002.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of fiduciary duty, violation of section 10 (b) and Rule 10b-5 of the 1934 Act, fraud, negligence, recklessness, breach of contract, unauthorized trading, failure to supervise, *respondeat superior*, and suitability. The causes of action relate to the purchase and sale of various securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants' claims are barred by the doctrines of laches, estoppel, setoff, and unclean hands; authorization; ratification;

contributory negligence; assumption of the risk; failure to mitigate damages; Claimants' claims are barred by the statute of limitations; and failure to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimants requested compensatory damages, in an amount to be proved at trial, that is more than \$100,000.00 but less than \$499,000.00; punitive damages in an amount not less than \$50,000.00; interest; attorney's fees; and other costs.

Respondents requested that the Statement of Claim be dismissed in its entirety and that forum fees be borne by Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on the merits, Respondent Jones requested that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Jones's Central Registration Depository ("CRD") Record.

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' claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jones's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Jones must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. That the parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. That any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPF is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00 = \$ 450.00

Pre-hearing conferences: June 17, 2003 1 session

One (1) Pre-hearing session with Panel @ \$ 1,125.00 = \$ 1,125.00

Pre-hearing conferences: May 19, 2003 1 session

Nine (9) Hearing sessions @ \$ 1,125.00 = \$ 10,125.00

Hearing Dates: September 17, 2003 2 sessions
September 18, 2003 1 session
September 19, 2003 2 sessions
February 19, 2004 2 sessions
February 20, 2004 2 sessions

Total Forum Fees = \$ 11,700.00

The Panel has assessed \$ 11,700.00 of the forum fees to Respondent MLPF.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee = \$ 300.00

Administrative Costs = \$ 165.00

Total Fees = \$ 465.00

Less payments = \$ 1,590.00

Refund owed Claimant = \$ 1,125.00

2. Respondent MLPF is assessed and shall pay:

Member Fees = \$ 5,200.00


Forum Fees	= \$ 11,700.00
<u>Administrative Costs</u>	= \$ 165.00
Total Fees	= \$ 17,065.00
<u>Less payments</u>	= \$ 5,365.00
Balance Due NASD Dispute Resolution	= \$ 11,700.00

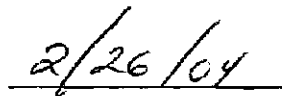
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Leon Henderson, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
David J. Anderson	-	Public Arbitrator, Panelist
Thomas C. Borthwick	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Leon Henderson, Jr., Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

David J. Anderson
Public Arbitrator, Panelist

Signature Date

Thomas C. Borthwick
Non-Public Arbitrator, Panelist

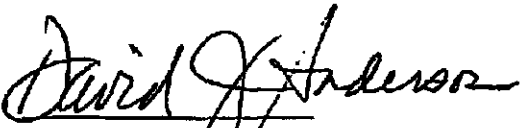
Signature Date


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

Concurring Arbitrators' Signatures

Leon Henderson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



David J. Anderson
Public Arbitrator, Panelist

March 04, 2004
Signature Date

Thomas C. Borthwick
Non-Public Arbitrator, Panelist

Signature Date

March 5, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Leon Henderson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

David J. Anderson
Public Arbitrator, Panelist

Signature Date

Thomas C. Borthwick
Thomas C. Borthwick
Non-Public Arbitrator, Panelist

Feb 28, 2004
Signature Date

March 5, 2004
Date of Service (For NASD Dispute Resolution office use only)