
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Rhodes Family Trust
Rachel Rhodes IRA

Case Number: 02-04768

Names of the Respondents

UBS PaineWebber, Inc.
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Russel Thomas Dingman
William H. Shepard, III
Gregory G. Ergle

Hearing Site: Orlando, Florida

Nature of the Dispute: Customers vs. Members and Associated Persons.

REPRESENTATION OF PARTIES

For Rhodes Family Trust and Rachel Rhodes IRA, collectively referred to as "Claimants": Stacy R. Costner, Esq., A. Anderson B. Dogali, Esq. and Joel J. Ewusiak, Esq., Forizs & Dogali, P.L., Tampa, Florida.

For UBS PaineWebber, Inc. ("PaineWebber"), Russel Thomas Dingman ("Dingman") and Gregory G. Ergle ("Ergle"): Sara Soto, Esq. and Nathalie Feix Scott, Esq., Law Offices of Fowler White Burnett P.A., Miami, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and William H. Shepard, III ("Shepard"): Frederick S. Schriels, Esq., Gray Harris Attorneys at Law, Tampa, Florida. On or about March 31, 2003, Francis M. Curran, Esq., Law Offices of Francis M. Curran, P.A., Clearwater, Florida, appeared as counsel for Respondents MLPFS and Shepard.

CASE INFORMATION

Statement of Claim filed on or about: August 12, 2002.

Claimants signed the Uniform Submission Agreement on: September 14, 2002.

Statement of Answer and Affirmative Defenses filed by Respondents PaineWebber, Dingman and Ergle on or about: December 3, 2002.

Response of Respondent MLPFS to Statement of Claim filed on or about: April 30, 2003.

Respondent PaineWebber signed the Uniform Submission Agreement on: April 21, 2003.

Respondent Dingman did not file an executed Uniform Submission Agreement.

Respondent Ergle did not file an executed Uniform Submission Agreement.

Respondent MLPFS signed the Uniform Submission Agreement on: November 14, 2000.

Respondent Shepard did not file a Statement of Answer or an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged the following causes of action: 1) unsuitability of trades; 2) failure to supervise; 3) breach of fiduciary duty; 4) fraud and misrepresentation; 5) violation of the Florida Securities and Investor Protection Act; and 6) violation of the Florida Deceptive and Unfair Trade Practices Act. The causes of action relate to investments that include shares of mutual funds in Munder Net Net, and shares of stock in Sprint, SAP Adr and RJR Nabisco.

Respondents MLPFS, PaineWebber, Dingman and Ergle denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of \$160,000.00 for actual losses to the portfolio principal; 2) compensatory damages in the amount of \$54,000.00 for loss of a well-managed portfolio; 3) compensatory damages for commissions paid in the amount of \$3,000.00; 4) compensatory damages for unfavorable tax treatment caused by unsuitable transactions; 5) punitive damages; 6) interest; 7) costs; 8) attorneys' fees; and 9) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents PaineWebber, Dingman and Ergle requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs; and 3) attorneys' fees.

Respondent MLPFS requested: 1) dismissal of the Statement of Claim in its entirety; and 2) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 13, 2003, Claimants and Respondents MLPFS and Shepard filed their Stipulated Dismissal Notice and Request for Arbitrators' Expungement Order Regarding William H. Shepard, III. Claimants dismissed with prejudice all claims against Respondent Shepard, and the parties to the Stipulation jointly requested that the Panel order the NASD to expunge all information regarding the above-captioned proceeding from Respondent Shepard's NASD Central Registration Depository ("CRD") records. On or about March 26, 2003, the Panel granted the request for an expungement order.

On or about July 31, 2003, Claimants filed their notice of settlement with NASD Dispute Resolution.

On or about September 18, 2003, Claimants and Respondents PaineWebber, Dingman and Ergle filed their Stipulation of Settlement. Claimants dismissed with prejudice all claims against Respondents PaineWebber, Dingman and Ergle; Claimants withdrew all allegations of wrongdoing against Respondents Dingman and Ergle; and Claimants and Respondents Dingman and Ergle stipulate and agree to the entry of an award directing the expungement of all references to the above-captioned proceeding from Respondents Dingman and Ergle's Form U-4 and registration records maintained by the NASD CRD. On or about September 22, 2003, the Panel agreed to the Stipulation of Settlement.

Respondents Dingman and Ergle did not file with the NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim are bound by the determination of the Panel on all issues submitted.

Respondent Shepard did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings, the Stipulated Dismissal Notice and Request for Arbitrators' Expungement Order Regarding William H. Shepard, III, Claimants' notice of settlement, and the Stipulation of Settlement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Shepard's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Shepard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondents Dingman and Ergle's Forms U-4 and registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Dingman and Ergle must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Respondent PaineWebber shall reimburse Claimants \$300.00 which represents the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

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, Respondents PaineWebber and MLPFS are member firms and parties.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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.

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session	= \$ 450.00
Pre-hearing conference: May 5, 2003 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$2,250.00
Pre-hearing conferences: April 15, 2003 1 session	
July 15, 2003 1 session	
Total Forum Fees	= \$2,700.00

Pursuant to the agreement of the parties, NASD Dispute Resolution has assessed forum fees in the amount of \$1,631.25 to Respondent PaineWebber.

Pursuant to the agreement of the parties, NASD Dispute Resolution has assessed a forum fee to Respondent PaineWebber in the amount of \$37.50 representing the balance of Claimants' hearing session deposit that is subject to retention under Rule 10332(f) of the Code.

Pursuant to the Initial Pre-hearing Conference Scheduling Order and Rule 10306 of the Code, forum fees are assessed to Respondent MLPFS in the amount of \$543.75, Respondent Dingman in the amount of \$262.50 and Respondent Ergle in the amount of \$262.50.

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.

Fee Summary

Claimants are jointly and severally liable for:

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

Respondent PaineWebber is solely liable for:

Member Fees	= \$5,200.00
Balance of Claimants' hearing session deposit	= \$ 37.50
Forum Fees	= \$1,631.25
Total Fees	= \$6,868.75
<u>Less payments</u>	= \$6,868.75
Balance Due NASD	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 543.75
Total Fees	= \$5,743.75
<u>Less payments</u>	= \$5,743.75
Balance Due NASD	= \$ 0.00

Respondent Dingman is solely liable for:

Forum Fees	= \$ 262.50
Total Fees	= \$ 262.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD	= \$ 262.50

Respondent Ergle is solely liable for:

Forum Fees	= \$ 262.50
Total Fees	= \$ 262.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD	= \$ 262.50

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

Parties' Signatures

_____/s/_____
Joel J. Ewusiak, Esq.
Counsel for Claimants

January 20, 2004
Signature Date

_____/s/_____
Sara Soto, Esq.
Counsel for Respondents
PaineWebber, Dingman and Ertle

January 21, 2004
Signature Date

_____/s/_____
Francis M. Curran, Esq.
Counsel for Respondent MLPFS

January 26, 2004
Signature Date

ARBITRATION PANEL

Donald M. Macdonald
Ronald C. Mitchell
John Steve Azadian

-
-
-

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Donald M. Macdonald
Public Arbitrator, Presiding Chairperson

January 30, 2004
Signature Date

_____/s/_____
Ronald C. Mitchell
Public Arbitrator

January 29, 2004
Signature Date

_____/s/_____
John Steve Azadian
Non-Public Arbitrator

January 30, 2004
Signature Date

February 3, 2004
Date of Service (For NASD use only)

NASD Dispute Resolution
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Stipulated Award Page 6

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_____/s/_____
 Joel J. Ewusiak, Esq.
 Counsel for Claimants

January 20, 2004
 Signature Date

_____/s/_____
 Sara Soto, Esq.
 Counsel for Respondents
 PaineWebber, Dingman and Egle

January 21, 2004
 Signature Date

_____/s/_____
 Francis M. Curran, Esq.
 Counsel for Respondent MLPFS

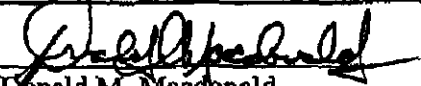
January 26, 2004
 Signature Date

ARBITRATION PANEL

Donald M. Macdonald
Ronald C. Mitchell
John Steve Azadian

- *Public Arbitrator, Presiding Chairperson*
 - *Public Arbitrator*
 - *Non-Public Arbitrator*

Concurring Arbitrators' Signatures


 Donald M. Macdonald
 Public Arbitrator, Presiding Chairperson

01/30/04
 Signature Date

 Ronald C. Mitchell
 Public Arbitrator

 Signature Date

 John Steve Azadian
 Non-Public Arbitrator

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Counsel for Claimants

01/20/04

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Signature Date

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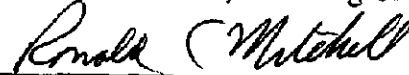
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- Non-Public Arbitrator

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Signature Date



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Public Arbitrator

January 29, 2004
Signature Date

John Steve Azadian
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Counsel for Respondents
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January 21, 2004
Signature Date

_____/s/_____
Francis M. Curran, Esq.
Counsel for Respondent MLPFS

January 26, 2004
Signature Date

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-
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Joel I. Ewusiak, Esq.
Counsel for Claimants

Signature Date


Sara Soto, Esq.
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PaineWebber, Dingman and Egle

1/21/04
Signature Date

Francis M. Curran, Esq.
Counsel for Respondent MLPFS

Signature Date

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- Non-Public Arbitrator

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Counsel for Claimants

Signature Date

Sara Soto, Esq.
Counsel for Respondents
PaineWebber, Dingman and Engle

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Francis M. Curran, Esq.
Counsel for Respondent MLPPS

1/26/04

Signature Date

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- *Public Arbitrator, Presiding Chairperson*
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