

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Walter W. McVety, Brenna A. McVety, and Deidre A. McVety, JTWROS (Claimants) v.
Merrill Lynch, Pierce, Fenner & Smith, Inc., Elizabeth Hartmayer, and Eric Joseph
Passeri (Respondents)

Case Number: 02-04929

Hearing Site: Boston, Massachusetts

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

REPRESENTATION OF PARTIES

Claimants Walter W. McVety ("W. McVety"), Brenna A. McVety ("B. McVety"), and
Deidre McVety ("D. McVety") hereinafter collectively referred to as "Claimants": Glenn
A. Duhl, Esq., Siegel, O'Connor, Zangari, O'Donnell & Beck, P.C., Hartford, CT., and
Carole R. Bernstein, Esq. Law Offices of Carole Bernstein, Westport, CT.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Elizabeth
Hartmayer ("E. Hartmayer"), and Eric Joseph Passeri ("E. Passeri") hereinafter
collectively referred to as "Respondents": James S. Rollins, Esq., Bingham McCutchen,
LLP, Hartford, CT.

CASE INFORMATION

Statement of Claim filed on or about: August 21, 2002.

W. McVety signed the Uniform Submission Agreement: July 31, 2002.

B. McVety signed the Uniform Submission Agreement: August 4, 2002.

D. McVety signed the Uniform Submission Agreement: August 6, 2002.

Joint Statement of Answer filed by Respondents on or about: March 21, 2003.

MLPFS signed the Uniform Submission Agreement: September 30, 2002.

E. Hartmayer signed the Uniform Submission Agreement: January 27, 2004.

E. Passeri signed the Uniform Submission Agreement: January 27, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: violations of the NASD Rules of Fair
Practice; Fraud in the Offer and Sale of Securities violation of Section 10(b) of the
Exchange Act and Rules 10b-5 promulgated thereunder; negligence; unsuitability; breach
of fiduciary duty; breach of contract; churning; failure to supervise and control person
liability. Claimants' claims involved unspecified securities.

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 approximate amount of \$300,000.00; dealer markups and profits; margin interest; punitive damages; treble damages in the amount of \$600,000.00; attorneys' fees pursuant to the Connecticut Uniform Securities Act, Connecticut General Statutes § 36b-29; forum fees, hearing fees and costs; interest at the prevailing statutory rate; and interest on all sums recovered at the legal rate of 10% per annum from the date of each loss to the date of any arbitration award pursuant to Connecticut General Statutes § 37-3a.

Respondents requested that the Panel issue an award dismissing the Statement of Claim in its entirety and grant Respondents such other, further and different relief as this panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants B. McVety and D. McVety did not appear at the hearings.

Upon Claimants' resting their case, Respondents made a motion for a directed verdict. After due consideration, the Panel denied the Respondents' motion.

Claimants originally named John Does 1-25 as Respondents in their Statement of Claim. Claimants subsequently withdrew their claim against Respondents John Does 1-25.

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, and 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. Respondents are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$214,981.00.
2. Any and all relief not specifically addressed herein, including punitive and/or treble 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 | = \$375.00 |
|--------------------------|------------|

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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

| | |
|-------------------------|--------------|
| Member surcharge | = \$2,250.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$4,000.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

| | |
|---|------------|
| September 29 and 30, 2003, adjournment by Claimants | = \$600.00 |
| September 29 and 30, 2003, adjournment by Respondents | = \$600.00 |

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:

| | |
|---|---------------|
| One (1) Pre-hearing session with Panel @ \$1,200.00 | = \$ 1,200.00 |
| Pre-hearing conference: May 23, 2003 1 session | |

| | |
|---|---------------|
| Eight (8) Hearing sessions @ \$1,200.00 | = \$ 9,600.00 |
| Hearing Dates: | |
| January 26, 2004 | 2 sessions |
| January 27, 2004 | 2 sessions |
| February 11, 2004 | 2 sessions |
| April 5, 2004 | 2 sessions |

| | |
|------------------|---------------|
| Total Forum Fees | = \$10,800.00 |
|------------------|---------------|

1. The Panel has assessed \$10,800.00 of the forum fees against MLPFS.

Fee Summary

1. Claimants are jointly and severally liable for:

| | |
|-------------------------|---------------|
| Initial Filing Fee | = \$ 375.00 |
| <u>Adjournment Fee</u> | = \$ 600.00 |
| Total Fees | = \$ 975.00 |
| <u>Less payments</u> | = \$ 1,575.00 |
| Refund Due to Claimants | = \$ 600.00 |

2. MLPFS is solely liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 7,000.00 |
| <u>Forum Fees</u> | = \$10,800.00 |
| Total Fees | = \$17,800.00 |
| <u>Less payments</u> | = \$ 7,000.00 |
| Balance Due NASD Dispute Resolution | = \$10,800.00 |

3. Respondents are jointly and severally liable for:

| | |
|-------------------------------------|-------------|
| <u>Adjournment Fee</u> | = \$ 600.00 |
| Total Fees | = \$ 600.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 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

| | | |
|--------------------------|---|------------------------------------|
| Mary C. Kelleher | - | Public Arbitrator, Presiding Chair |
| Robert Titus | - | Public Arbitrator |
| Timothy F. Shanahan, CFP | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Mary C. Kelleher
Mary C. Kelleher
Public Arbitrator, Presiding Chairperson

April 16, 2004
Signature Date

Robert Titus
Robert Titus
Public Arbitrator

Signature Date

Timothy F. Shanahan, CFP
Timothy F. Shanahan, CFP
Non-Public Arbitrator

Signature Date

April 21, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

| | | |
|--------------------------|---|------------------------------------|
| Mary C. Kelleher | - | Public Arbitrator, Presiding Chair |
| Robert Titus | - | Public Arbitrator |
| Timothy F. Shanahan, CFP | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Mary C. Kelleher
Public Arbitrator, Presiding Chairperson

Signature Date

Robert B. Titus
Public Arbitrator

April 13, 2004
Signature Date

Timothy F. Shanahan, CFP
Non-Public Arbitrator

Signature Date

April 21, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Mary C. Kelleher - Public Arbitrator, Presiding Chair
Robert Titus - Public Arbitrator
Timothy F. Shanahan, CFP - Non-Public Arbitrator

Concurring Arbitrators' Signatures

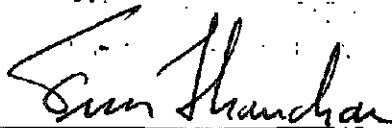
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Mary C. Kelleher
Public Arbitrator, Presiding Chairperson

Signature Date

Robert Titus
Public Arbitrator

Signature Date



Timothy F. Shanahan, CFP
Non-Public Arbitrator

4-13-04

Signature Date

April 21, 2004

Date of Service (For NASD Dispute Resolution use only)