
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Mark Manning

Case Number: 02-05454

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Mark Manning, referred to as "Claimant": John C. Taylor, Esq., Taylor, Day & Currie, Jacksonville, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., referred to as "Respondent MLPFS": Bennett Falk, Esq., Morgan, Lewis & Bockius, LLP, Miami, Florida. On or about February 5, 2004, Bennett Falk, Esq. filed a Notice of Substitution confirming counsel's withdrawal from Morgan, Lewis & Bockius, LLP, and counsel's successive association with Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: September 9, 2002.

Claimant signed the Uniform Submission Agreement on: September 9, 2002.

Statement of Answer filed by Respondent MLPFS on or about: November 18, 2002.

Amended Statement of Answer filed by Respondent MLPFS on or about: March 21, 2003.

Respondent MLPFS signed Uniform Submission Agreements on: October 19, 2002 and December 7, 2002.

CASE SUMMARY

Claimant alleged the following causes of action: 1) violation of Chapter 517, Florida Statutes; 2) negligence; 3) breach of fiduciary duty; and 4) common law fraud. The causes of action relate to investments in shares of VA Linux Systems, Inc., an uncovered option or "naked put" strategy, and a failure to construct or attempt to construct a portfolio consistent with Claimant's investment objectives.

Respondent MLPFS denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$845,000.00; 2) punitive damages; 3) interest; 4) costs; 5) attorneys' fees; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent MLPFS requested: 1) dismissal of the Statement of Claim in its entirety; 2) assessment of all forum fees to Claimant; and 3) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 11, 2003, the Panel granted Respondent MLPFS leave to file an Amended Statement of Answer.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent MLPFS is liable and shall pay to Claimant compensatory damages in the amount of \$20,000.00, pre-judgment interest denied. The Panel finds Respondent MLPFS liable for negligence. The Panel does not find Respondent MLPFS liable on all other claims, including Chapter 517, Florida Statutes.
2. Claimant's request for punitive damages is denied.
3. Claimant's request for attorneys' fees is denied.
4. Any and all claims or relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 500.00

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 firm and a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00 per session	= \$ 1,800.00
Pre-hearing conferences:	
May 12, 2003	1 session
August 15, 2003	1 session
November 10, 2003	1 session
November 11, 2003	1 session
One (1) Pre-hearing session with Panel @ \$1,200.00 per session	= \$ 1,200.00
Pre-hearing conference:	
February 11, 2003	1 session
Six (6) Hearing sessions @ \$1,200.00 per session	= \$ 7,200.00
Hearing Dates:	
January 21, 2004	2 sessions
January 22, 2004	2 sessions
January 23, 2004	2 sessions
<hr/> Total Forum Fees	<hr/> = \$10,200.00

The Panel has assessed the total forum fees in the amount of \$10,200.00 to Respondent MLPFS.

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

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$10,200.00
<u>Total Fees</u>	= \$18,750.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD</u>	= \$10,200.00

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

ARBITRATION PANEL

<i>Simone Sicola</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Helen G. Bradley</i>	-	<i>Public Arbitrator</i>
<i>L. Matthew Byrd, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 /s/
Simone Sicola
Public Arbitrator, Presiding Chairperson

February 5, 2004
Signature Date

 /s/
Helen G. Bradley
Public Arbitrator

February 8, 2004
Signature Date

 /s/
L. Matthew Byrd, Esq.
Non-Public Arbitrator

February 6, 2004
Signature Date

February 9, 2004
Date of Service (For NASD use only)

Feb. 5. 2004 4:27PM NASD

No. 0156 P. 5/5

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There were no administrative costs incurred during these proceedings.

Fees Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 500.00
Balance Due NASD	= \$ 0.00

Respondent MLPPS is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$10,200.00
Total Fees	= \$18,750.00
Less payments	= \$ 8,550.00
Balance Due NASD	= \$10,200.00

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ARBITRATION PANEL

Simone Sicola
 Helen G. Bradley
 L. Matthew Byrd, Esq.

Public Arbitrator, Presiding Chairperson
 Public Arbitrator
 Non-Public Arbitrator

Concurring Arbitrators' Signatures


 Simone Sicola
 Public Arbitrator, Presiding Chairperson

2/5/04
 Signature Date

Helen G. Bradley
 Public Arbitrator

Signature Date

L. Matthew Byrd, Esq.
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

NASD Dispute Resolution
Arbitration No. 02-05454
Award Page 4

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ARBITRATION PANEL

<u>Simone Sicola</u>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<u>Helen G. Bradley</u>	-	<i>Public Arbitrator</i>
<u>L. Matthew Byrd, Esq.</u>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Simone Sicola
Public Arbitrator, Presiding Chairperson

Helen G. Bradley
Public Arbitrator

Signature Date

2/8/4
Signature Date

L. Matthew Byrd, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD use only)

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD</u>	= \$ 0.00

Respondent MLPRS is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$10,200.00
<u>Total Fees</u>	= \$18,750.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD</u>	= \$10,200.00

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

ARBITRATION PANEL

<i>Simone Sicola</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Helen G. Bradley</i>	-	<i>Public Arbitrator</i>
<i>L. Matthew Byrd, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Simone Sicola
Public Arbitrator, Presiding Chairperson

Signature Date

Helen G. Bradley
Public Arbitrator

Signature Date

L. Matthew Byrd

L. Matthew Byrd, Esq.
Non-Public Arbitrator

2/6/2004

Signature Date

Date of Service (For NASD use only)