

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael Solomone and Sari Solomone (Claimants)

Case Number: 02-05758

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Mollie L. Brennan, James A. Richardson, and
Travis K. Musgrave (Respondents)

Hearing Site: Louisville, Kentucky

NATURE OF THE DISPUTE

Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

Claimants, Michael Solomone and Sari Solomone, hereinafter collectively referred to as "Claimants": Jeffrey A. Smith, Esq., Jeffrey A. Smith and Associates, Lexington, KY (with respect to all matters through the final hearing) and Jon A. Woodall, Esq., McBrayer, McGinnis, Leslie & Kirkland, Lexington, KY (with respect to certain post-hearing matters only).

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Mollie L. Brennan, James A. Richardson, and Travis K. Musgrave, hereinafter collectively referred to as "Respondents": Russell S. Sayre, Esq., Taft, Stettinius & Hollister, LLP, Cincinnati, OH.

CASE INFORMATION

Statement of Claim was filed on or about: September 27, 2002.

Michael Solomone signed the Uniform Submission Agreement: September 24, 2002.

Sari Solomone signed the Uniform Submission Agreement: September 24, 2002.

Joint Statement of Answer was filed by Merrill Lynch, Pierce, Fenner & Smith, Inc., Mollie L. Brennan, James A. Richardson, and Travis K. Musgrave on or about: January 10, 2003.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Uniform Submission Agreement: December 30, 2002.

Mollie L. Brennan did not file a Uniform Submission Agreement.

James A. Richardson did not file a Uniform Submission Agreement.

Travis K. Musgrave did not file a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action in their Statement of Claim: suitability; failure to execute requested trades; breach of fiduciary duty; negligence and recklessness; failure to supervise. The causes of action related to Claimants' brokerage accounts.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted affirmative defenses including the following: The Statement of Claim failed to state a claim against Respondents upon which relief may be granted by the Arbitrators; if Respondents are found to have been negligent, Claimants are barred from recovering any damages by virtue of their own negligence; and Claimants' claims are barred by the doctrines of ratification, laches, estoppel and waiver.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$926,000 plus costs, expenses and attorneys' fees, together with punitive damages in the amount of \$1,852,000.

Respondents denied Claimants' allegations of wrongdoing, requested dismissal of Claimants' Statement of Claim, an award in their favor of the costs of this proceeding, expungement of all references to this dispute from the individual Respondents' respective CRD records, and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On March 30, 2004, the final hearing was commenced in Louisville, Kentucky, before NASD Arbitrators Randall Scott Strauss (Chair), James C. Stone, III, and Jan M. West (collectively, "Arbitration Panel"). On March 31, 2004, following the close of Claimants' case in chief, the Arbitration Panel granted Respondent Travis Musgrave's motion that he be dismissed as a Respondent as no claim for relief had been proved against him. The Arbitration Panel directed that an Award be prepared recommending the expungement of any reference to this Arbitration matter from Musgrave's CRD record. Claimants, through counsel, thereafter agreed on the record that based on the evidence received, it was unnecessary to continue with the hearing with respect to Respondents Merrill Lynch, Brennan or Richardson, and the parties reached a full resolution of all claims which were brought or could have been brought in the Arbitration, subject to Claimants' affirmative acknowledgement that the complete expungement of any reference to this Arbitration matter in the CRD records of Respondents Brennan and Richardson is appropriate, and the Panel's unanimous opinion that such an expungement is warranted. Following the hearing, Respondents filed a motion to enforce the settlement agreement, and Claimants filed a motion to set aside the settlement agreement and reconvene the hearing. Following a telephonic hearing on the motions, the panel granted Respondents' motion to enforce the settlement agreement and denied Claimants' motion to set aside the settlement

agreement and reconvene the hearing. The panel therefore enters this award enforcing the Settlement Agreement that is incorporated by reference herein. Without limiting the generality of the Settlement Agreement, the terms of which shall be enforceable as if Claimants had executed said agreement.

On or about November 22, 2004, the panel made a ruling, which granted Respondents' Motion to Enforce Settlement Agreement and denied Claimants' Motion to Set Aside Settlement Agreement and Reconvene Hearing.

Respondents, Mollie L. Brennan, James A. Richardson, and Travis K. Musgrave, did not file with NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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. Subject to the further terms of this Award, all claims asserted by Claimants are dismissed with prejudice.
2. The Panel recommends and directs the complete expungement of all reference to this Arbitration matter from the registration records maintained by the NASD Central Registration Depository ("CRD") with respect to Mollie L. Brennan, James A. Richardson and Travis K. Musgrave, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, those Respondents shall obtain confirmation from a court of competent jurisdiction before CRD will execute the foregoing expungement directive. Claimants and Jeffrey Smith shall take all such steps as are necessary to affirmatively advocate that the CRD records of Mollie Brennan, James Richardson and Travis Musgrave shall be expunged of any reference whatsoever to this Arbitration, and shall cooperate with Respondents and participate in obtaining the confirmation from a court of competent jurisdiction directing the expungement.
3. Within 30 days after Merrill Lynch's receipt of this Award recommending and directing the complete expungement of all reference to this Arbitration from the CRD records of Respondents Mollie Brennan, James Richardson and Travis Musgrave, Merrill Lynch shall pay to Claimants the consideration recited in the Settlement Agreement.
4. Claimants, themselves and, as applicable, for their respective present and former parents, subsidiaries, affiliates, related entities, employees, officers, directors, agents, attorneys, trustees, guardians, administrators, agents, representatives, heirs, successors and assigns,

and all others in privity to Claimants, shall be deemed to have released and forever discharged Merrill Lynch, Brennan, Richardson and Musgrave and, as applicable, their present and former parents, subsidiaries, affiliates, related entities, employees, officers, directors, agents, representatives, predecessors, heirs, attorneys, successors, and assigns, from any and all claims, causes of action, charges, suits, rights, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, executions, obligations, liabilities, and demands of any kind or nature whatsoever, at law, arbitration or in equity, which they now have, may have had, have ever had, claim to have had, or which their heirs, executors, administrators, successors, or assigns hereafter may have, arising prior to the date hereof or relating in any way to the claims which were made or could have been made in the Arbitration, including, without limiting the generality of the foregoing, any and all claims relating in any way to Merrill Lynch Account Nos. 545-22M05, 545-22N57, 545-26B16, 545-26J96, 545-26J98, 545-22N78, 545-22N79, 545-22N80, 545-22N81, 545-22N81, 545-22N82, 545-26N26, 545-26N27, 545-90701, 545-93X82 and any other Merrill Lynch accounts of Claimants at any time.

5. Claimants and Smith, and, as applicable, their respective present and former employees, representatives, agents, attorneys, heirs, family members, and assigns, and all others in privity to Claimants and Smith, shall keep the terms of this Settlement Agreement confidential and agree not to disclose them to any other person, except as may be required in connection with the preparation and filing of income tax returns, to their accountant or as may be required by the order of a court of competent jurisdiction, or any regulatory or self-regulatory agency or at any hearing in an action between the parties or any interested Party or their counsel. The foregoing does not prohibit or restrict the Claimants from responding to any inquiry about this settlement or its underlying facts and circumstances by the Securities and Exchange Commission (SEC), the NASD Dispute Resolution, Inc., or any other self-regulatory organization. Claimants, Smith, and their respective attorneys, partners, associates, agents, family members and other representatives shall not to make any disclosure to the press or other member of the media regarding the underlying dispute or the terms of this Settlement Agreement. The breach this provision shall entitle Respondents to recover the payment described in paragraph 3 hereof by way of a summary proceeding before the NASD.
6. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
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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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
Total Member Fees	= \$8,550.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with Panel @ \$1,200.00	= \$2,400.00
July 24, 2003	
November 22, 2004	

(6) Hearing sessions with Panel @ \$1,200.00	= \$7,200.00
March 30, 2004: 2 sessions	
March 31, 2004: 3 sessions	
April 1, 2004: 1 session	

Total Forum Fees	= \$9,600.00
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The Panel assesses \$5,400.00 of the forum fees jointly and severally against Michael Solomone and Sari Solomone.

The Panel assesses \$4,200.00 of the forum fees against Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

Michael Solomone and Sari Solomone are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 5,900.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$12,750.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

ARBITRATION PANEL

Randall Scott Strause, Esq.	-	Public Arbitrator, Presiding Chair
Jan M. West, Esq.	-	Public Arbitrator
James C. Stone, III	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Randall Scott Strause, Esq.
Randall Scott Strause, Esq.
Public Arbitrator, Presiding Chairperson

02/03/05
Signature Date

/s/ Jan M. West, Esq.
Jan M. West, Esq.
Public Arbitrator

02/03/05
Signature Date

/s/ James C. Stone, III
James C. Stone, III
Non-Public Arbitrator

02/03/05
Signature Date

02/07/05
Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chairperson



Signature Date

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Public Arbitrator

Signature Date

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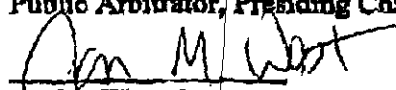
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Public Arbitrator, Presiding Chairperson

Signature Date


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Public Arbitrator


2-3-05
Signature Date

James C. Stone, III
Non-Public Arbitrator

Signature Date

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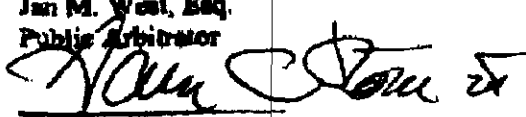
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Randall Scott Strause, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jan M. West, Esq.
Public Arbitrator

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James C. Stone, III
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2/3/05
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