

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Edward J. O'Neill
Carla C. O'Neill

Case Number: 02-06309

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Kevin W. Kolmer
John R. Pierce, Jr.
Joseph P. Brooks
Susan Bonetto

Hearing Site: Philadelphia, PA

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

REPRESENTATION OF PARTIES

Claimants, Edward J. O'Neill and Carla C. O'Neill, hereinafter collectively referred to as "Claimants", were represented by Steven M. Janove, Esq., Cedrone & Janove, Philadelphia, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Kevin W. Kolmer ("Kolmer"), John R. Pierce, Jr. ("Pierce"), Joseph P. Brooks ("Brooks") and Susan Bonetto ("Bonetto"), hereinafter collectively referred to as "Respondents", were represented by G. Jeffrey Boujoukos, Esq. and Paul T. Chryssikos, Esq., Morgan, Lewis & Bockius, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about October 16, 2002.

Amended Statement of Claim filed on or about March 6, 2003.

Claimants signed the Uniform Submission Agreement on October 16, 2002.

Statement of Answer with request for expungement of disciplinary record filed by Respondents Merrill Lynch and Kolmer on or about January 10, 2003.

Amended Statement of Answer with request for expungement of disciplinary record filed by Respondents Merrill Lynch, Kolmer, Pierce, Brooks and Bonetto on or about April 21, 2003.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on November 27, 2002.

Respondent Kolmer signed the Uniform Submission Agreement on December 10, 2002.

Respondent Pierce signed the Uniform Submission Agreement on March 27, 2003.

Respondent Brooks signed the Uniform Submission Agreement on March 28, 2003.

Respondents Bonetto signed the Uniform Submission Agreement on March 27, 2003.

CASE SUMMARY

Claimants, in their Statement of Claim and Amended Statement of Claim, asserted the following causes of action, among others: violation of NASD Rule 2310, unsuitability, breach of fiduciary duty, violation of NASD Rules 2110, and 3010, and failure to supervise. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Statement of Answer and Amended Statement of Answer, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimants were negligent in the supervision of their financial affairs and, in particular, the operation of their Merrill Lynch account; Claimants were reckless and failed to use the requisite due diligence in the supervision of their financial affairs and, in particular, the operation of their Merrill Lynch account; Claimants failed to act to mitigate their alleged damages, if any; Claimants have sustained no recoverable damages in connection with the matters alleged; to the extent Claimants incurred any damages, such damages are attributable to market conditions and not to any acts or omissions of Respondents, and Claimants assumed the risks of their investments; Claimants expressly ordered, approved, authorized, participated in and ratified the acts and transactions complained of and upon which recovery is sought, and Claimants accordingly are estopped from recovery herein, pursuant to the doctrines of ratification, waiver and estoppel; at all times, Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees and at all times acted in good faith and did not at any time, directly or indirectly, induce any acts constituting a cause of action; Respondents breached no duty in tort, contract, under statute or otherwise, owed to Claimants; Respondents were not fiduciaries vis-à-vis Claimants; there is no private cause of action for alleged violation of self-regulatory organization rules; and the claims asserted by Claimants are barred, in whole or in part, by applicable statutes of limitation and the doctrine of laches.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 750,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that Claimants' claims be denied, that they be awarded all costs and attorneys' fees in connection with the arbitration, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from the Central Registration Depository ("CRD") record of Respondents Kolmer, Pierce, Brooks and Bonetto.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the parties fully and finally settled all claims by and between them. Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That the parties have amicably resolved their differences and have requested this Stipulated Award;
2. That Claimants have dismissed all claims with prejudice against Respondents;
3. That the Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Kolmer's, Pierce's, Brooks' and Bonetto's registration records maintained by the CRD with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Kolmer, Pierce, Brooks and Bonetto must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. That each party shall bear its own costs and expenses, including attorneys' fees, except as Fees are specifically addressed below; and
5. That any and all relief not specifically addressed herein, including punitive 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 person at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge = \$ 2,250.00

Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

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 conference: February 6, 2004 1 session	
Total Forum Fees	= \$ 450.00

1. The Panel has assessed \$ 75.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 75.00 of the forum fees to Respondent Merrill Lynch.
3. The Panel has assessed \$ 75.00 of the forum fees to Respondent Kolmer.
4. The Panel has assessed \$ 75.00 of the forum fees to Respondent Pierce.
5. The Panel has assessed \$ 75.00 of the forum fees to Respondent Brooks.
6. The Panel has assessed \$ 75.00 of the forum fees to Respondent Bonetto.

Fee Summary

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 75.00
Total Fees	= \$ 450.00
Less payments	= \$ 1,575.00
Refund owed Claimants	= \$ 1,125.00
2. Respondent Merrill Lynch is assessed and shall pay:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 75.00
Total Fees	= \$ 7,075.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 75.00
3. Respondent Kolmer is assessed and shall pay:

Forum Fees	= \$ 75.00
Total Fees	= \$ 75.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 75.00
4. Respondent Pierce is assessed and shall pay:

Forum Fees	= \$ 75.00
Total Fees	= \$ 75.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution = \$ 75.00

5. Respondent Brooks is assessed and shall pay:

<u>Forum Fees</u>	= \$ 75.00
Total Fees	= \$ 75.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 75.00

6. Respondent Bonetto is assessed and shall pay:

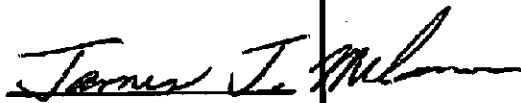
<u>Forum Fees</u>	= \$ 75.00
Total Fees	= \$ 75.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 75.00

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

ARBITRATION PANEL

James J. McCann	- Public Arbitrator, Presiding Chairperson
Stephen B. Narin, Esq.	- Public Arbitrator, Panelist
Alan M. Schankel	- Non-Public Arbitrator, Panelist

Concurring Arbitrator's Signatures



James J. McCann
Public Arbitrator, Presiding Chairperson

9/20/04

Signature Date

Stephen B. Narin, Esq.
Public Arbitrator, Panelist

Signature Date

Alan M. Schankel
Non-Public Arbitrator, Panelist

Signature Date


September 22, 2004

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

Concurring Arbitrators' Signatures

James J. McCann
Public Arbitrator, Presiding Chairperson

Signature Date


Stephen B. Narin, Esq.
Public Arbitrator, Panelist

9/20/04
Signature Date

Alan M. Schankel
Non-Public Arbitrator, Panelist

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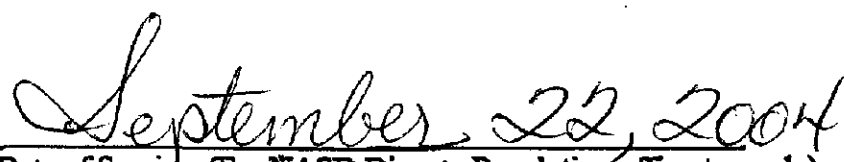
Signature Date



Alan M. Schankel
Non-Public Arbitrator, Panelist



Signature Date



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