

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

George M. Ruppert individually and as Custodian of
The George M. Ruppert IRA

Case Number: 02-06358

Name of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
William Kirvan, Jr.
Margaret Stancampiano

Hearing Site: Washington, DC

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

REPRESENTATION OF PARTIES

Claimant, George M. Ruppert individually and as Custodian of the George M. Ruppert IRA ("Claimant"), was represented by Michael Knoll, Esq., Law Offices of Michael Knoll, Ossining, New York.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), William Kirvan, Jr. ("Kirvan"), and Margaret Stancampiano ("Stancampiano"), hereinafter collectively referred to as "Respondents", were represented by Ira L. Oring, Esq, Fedder and Garten, Baltimore, Maryland.

CASE INFORMATION

Statement of Claim filed on October 21, 2002.

Amended Statement of Claim filed on November 21, 2002.

Claimant signed the Uniform Submission Agreement on October 21, 2002.

Joint Statement of Answer to the Amended Statement of Claim filed by Respondents on January 23, 2003.

Respondent Kirvan signed the Uniform Submission Agreement on January 8, 2003.

Respondent Stancampiano signed the Uniform Submission Agreement on January 6, 2003.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on July 17, 2003.

Respondents filed a Renewed Motion to Dismiss, or, in the Alternative, Motion for Reconsideration on November 24, 2003.

Claimant filed a Reply to Respondents' Renewed Motion to Dismiss on December 11, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of fiduciary duty, breach of contract, churning, violation of Federal securities laws, violation of NYSE Rules and NASD Rules of Fair Practice, failure to supervise, and *respondeat superior*. The causes of action relate to the purchase and sale of various securities including Lucent, Ariba, and NASDAQ 100.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Amended Statement of Claim is barred by the doctrines of laches; assumption of the risk; the Amended Statement of Claim is barred by waiver, ratification and estoppel; failure to mitigate damages; and proximate cause.

RELIEF REQUESTED

Claimant in his Amended Statement of Claim requested:

Compensatory Damages	\$95,246.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Claimant requested disgorgement and restitution of all fees, commissions, selling concessions, underwriting fees, and margin interest.	

Respondents in their Statement of Answer requested that the Amended Statement of Claim be dismissed in its entirety and that all references to this arbitration be expunged from the Central Registration Depository ("CRD") records of Respondents Kirvan and Stancampiano.:

OTHER ISSUES CONSIDERED AND DECIDED

A hearing took place on October 20, 2003. At the conclusion of Claimant's case, Respondents moved for a dismissal of all claims. The Arbitration Panel (the "Panel") granted the Motion at the hearing.

By Order dated November 11, 2003, the Panel rescinded its oral ruling of October 20, 2003 and agreed to hear further testimony from the parties.

By Order dated August 30, 2004, the Panel granted Respondents' Renewed Motion to Dismiss.

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

1. All claims against Respondents Merrill Lynch, Kirvan and Stancampiano are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kirvan's and Respondent Stancampiano's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Kirvan and Stancampiano must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive
3. All claims for punitive damages and attorneys' fees are denied in their entirety;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
5. Any and all relief not specifically addressed herein is denied in its entirety.

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	= \$ 225.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

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:

Three (3) Pre-hearing sessions with Panel @ \$750.00 = \$2,250.00
Pre-hearing conferences: June 23, 2003 1 session
January 16, 2004 1 session
April 16, 2004 1 session

Two (2) Hearing sessions @ \$750.00 = \$1,500.00
Hearing Date: October 20, 2003 2 sessions

Total Forum Fees = \$3,750.00

1. The Panel has assessed \$2,625.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Kirvan and Stancampiano.

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.

1. Claimant requested copies of tapes = \$ 45.00
2. Respondent Merrill Lynch requested copies of tapes = \$ 45.00

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:
Initial Filing Fee = \$ 225.00
Forum Fees = \$2,625.00
Administrative Costs = \$ 45.00
Total Fees = \$2,895.00
Less payments = \$1,020.00
Balance Due NASD Dispute Resolution = \$1,875.00

2. Respondent Merrill Lynch is assessed and shall pay the following fees:
Member Fees = \$3,550.00
Administrative Costs = \$ 45.00
Total Fees = \$3,595.00
Less payments = \$4,210.00
Refund to be returned to CRD = \$ 635.00

4. Respondents are jointly and severally assessed and shall pay the following fees:

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Forum Fees	= \$1,125.00
Total Fees	= \$1,125.00
Less payments	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$ 00.00

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

ARBITRATION PANEL

Thomas B. Corey, Esq.	- Public Arbitrator, Presiding Chairperson
Jane C. Carney, CPA	- Public Arbitrator, Panelist
Jane F. Moore	- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Thomas B. Corey, Esq.
Public Arbitrator, Presiding Chairperson

24 September 2004
Signature Date

Jane C. Carney, CPA
Public Arbitrator, Panelist

Signature Date

Jane F. Moore
Non-Public Arbitrator, Panelist

Signature Date

9/27/04
Date of Service (For NASD Dispute Resolution office use only)

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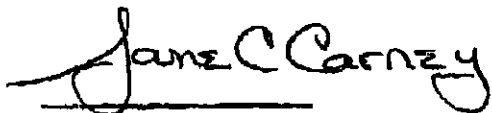
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Jane F. Moore	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Thomas B. Corey, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Jane C. Carney, CPA
Public Arbitrator, Panelist

9-14-2004

Signature Date

Jane F. Moore
Non-Public Arbitrator, Panelist

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

Jane C. Carney, CPA
Public Arbitrator, Panelist

Signature Date



Jane F. Moore
Non-Public Arbitrator, Panelist

9.21.04

Signature Date

9/27/04

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