

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Manfred and Kathleen Heinrich

Case Number: 02-06390

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
And Gregory C. Sarian

Hearing Site: Philadelphia, PA

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Claimants, Manfred and Kathleen Heinrich, hereinafter collectively referred to as "Claimants", were represented by Steven M. Dranoff, Esquire and Nicholas J. Guiliano, Esquire, Philadelphia, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner and Smith, Incorporated ("Merrill Lynch") and Gregory C. Sarian, ("Sarian"), were represented by G. Jeffrey Boujoukos, Esquire and Paul T. Chryssikos, Esquire, Morgan, Lewis & Bockius LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about October 21, 2002.

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

Statement of Answer with request for expungement of disciplinary record filed by Respondents Merrill Lynch and Sarian on or about January 23, 2003.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on September 9, 2003.

Respondent Sarian signed the Uniform Submission Agreement on September 9, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; violation of NASD Conduct Rules IM-2310 and 3010; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; 73 Pa. C.S. § 201-1 et seq.; breach of fiduciary duty; failure to supervise; and, common law fraud. The causes of action relate to the purchase and sale of various unspecified technology securities and growth funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following affirmative defenses: failure to state a claim upon which relief may be granted; statute of limitations; estoppel, waiver and laches; ratification; Respondents acted in good faith and in a commercially reasonable manner; Merrill Lynch properly supervised Claimants' accounts; the allegations relating to damages are conclusory; failure to mitigate damages; and all transactions upon which Claimants based their claims were conducted in accordance with all applicable Exchange rules and regulations.

RELIEF REQUESTED

Claimants requested compensatory damages of \$55,000, lost income under the "well managed portfolio" theory of recovery, punitive damages, interest, reasonable attorneys' fees and costs.

Respondents Merrill Lynch and Sarian requested dismissal of the Statement of Claim, reasonable and necessary attorneys' fees and costs, and expungement of all claims from Respondent Sarian's Central Registration Depository ("CRD") record.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, Claimants settled all claims with Respondent Merrill Lynch and voluntarily dismissed with prejudice all claims against Respondent Sarian on or about January 13, 2004. 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 Arbitration Panel (the "Panel") has decided in full and final resolution of the issues submitted for determination as follows:

1. The listed parties have amicably resolved their differences and have requested this Stipulated Award;
2. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Sarian's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Sarian must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorneys' fees, except as fees are specifically addressed below; and,
4. Any and all relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

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

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, Merrill Lynch is a party.

Member surcharge = \$ 1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 1,700.00

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: December 15, 2003 1 session

One (1) Pre-hearing session with Panel @ \$ 750.00 = \$ 750.00

Pre-hearing conference: August 1, 2003 1 session

Total Forum Fees = \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees to Claimants, jointly and severally.

2. The Panel has assessed \$600.00 of the forum fees to Respondents, jointly and severally.

Fee Summary

1. Claimants are assessed and shall pay:

Initial Filing Fee = \$ 225.00

Forum Fees = \$ 600.00

Total Fees = \$ 825.00

Less payments = \$ 975.00

Refund owed Claimants = \$ 150.00

2. Respondent Merrill Lynch is assessed and shall pay:

<u>Member Fees</u>	= \$3,550.00
<u>Total Fees</u>	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay:

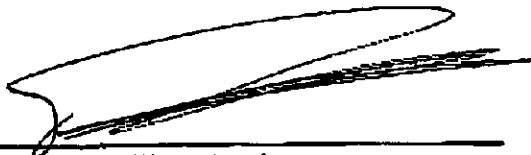
<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Fred W. Miller, Esquire	-	Public Arbitrator, Presiding Chairperson
Blaine S. Greenfield	-	Public Arbitrator, Panelist
Felix A. Meschini, Jr.	-	Industry Arbitrator, Panelist

Concurring Arbitrators' Signatures



Fred W. Miller, Esquire
Public Arbitrator, Presiding Chairperson

May 21, 2004
Signature Date

Blaine S. Greenfield
Public Arbitrator, Panelist

Signature Date

Felix A. Meschini, Jr.
Industry Arbitrator, Panelist

Signature Date

May 24, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

Fred W. Miller, Esquire
Blaine S. Greenfield
Felix A. Meschini, Jr.

Public Arbitrator, Presiding Chairperson
Public Arbitrator, Panelist
Industry Arbitrator, Panelist

Concurring Arbitrators' Signatures

Fred W. Miller, Esquire
Public Arbitrator, Presiding Chairperson

Signature Date


Blaine S. Greenfield
Public Arbitrator, Panelist

5/18/04
Signature Date

Felix A. Meschini, Jr.
Industry Arbitrator, Panelist

Signature Date

May 24, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Blaine S. Greenfield	-	Public Arbitrator, Panelist
Felix A. Meschini, Jr.	-	Industry Arbitrator, Panelist

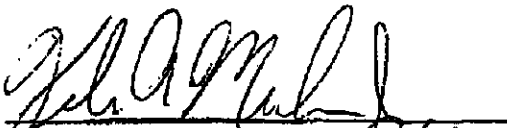
Concurring Arbitrators' Signatures

Fred W. Miller, Esquire
Public Arbitrator, Presiding Chairperson

Signature Date

Blaine S. Greenfield
Public Arbitrator, Panelist

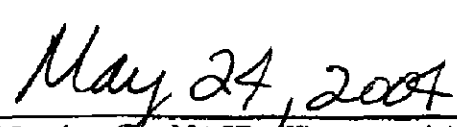
Signature Date



Felix A. Meschini, Jr.
Industry Arbitrator, Panelist



Signature Date



Date of Service (for NASD office use only)