

Stipulated Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

George A. Eddy, TTEE, Kathryn C. Eddy, TTEE, U/A DTD 1/14/99, George A. Eddy, IRA and Kathryn C. Eddy, IRA Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., James J. Hartigan, Josefina Glock and Neil J. Surgenor, Respondents

Case Number: 02-06427

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Michael Harrington, Esq.
Law Offices of James Jay Seltzer
Emeryville, California

For Respondents Merrill Lynch, Pierce,
Fenner & Smith, Inc., James J. Hartigan and
Josefina Glock:

Kenneth C. Mennemeier, Esq.
Mennemeier, Glassman & Stroud
Sacramento, California

CASE INFORMATION

Statement of Claim filed: October 24, 2002

Claimants' Uniform Submission Agreement signed: October 17, 2002

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), James J. Hartigan, Josefina Glock and Neil J. Surgenor: February 11, 2003

Respondent Merrill Lynch's Uniform Submission Agreement signed: January 8, 2003

Respondent James J. Hartigan's Uniform Submission Agreement signed: January 27, 2003

Respondent Josefina Glock's Uniform Submission Agreement signed: February 5, 2003

Respondent Neil J. Surgenor's Uniform Submission Agreement signed: January 12, 2003

CASE SUMMARY

Claimants alleged that the above referenced dispute involves investments in Conexant Systems Inc. stock and various telecom and biotechnology stocks. Claimant also alleged the following claims: 1) Violation of Securities Rules and Regulations; 2) Suitability; 3) Omissions and Misrepresentations of Material Fact; 4) Violation of Margin Requirements; 5) Negligent Supervision and Failure to Supervise; 6) Violation of Corporations Code Sections 25401 and 25504.1; 7) Negligence; 8) Breach of Contract; 9) The Implied Covenant of Good Faith and Fair Dealing; 10) Breach of Fiduciary Duty; 11) Common Law Fraud; and 12) Elder Abuse and Dependent Adult Protection Act.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Damages in excess of \$1,000,000.00;
2. Interest;
3. Punitive damages;
4. Treble damages;
5. Attorney's fees;
6. Costs; and
7. Such other action deemed just and appropriate in this matter.

Respondents requested:

1. Dismissal of Claimant's claims;
2. Costs; and
3. That the Panel recommend that all reference to this matter be expunged from the individual respondents' CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

On December 14, 2002, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 26, 2003, Respondents' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On or about September 24, 2003, the Panel was advised of Respondent Neil J. Surgenor's bankruptcy filing and that the above-captioned matter is stayed with respect to Mr. Surgenor.

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

STIPULATION

By and through their counsel of record, Claimants George and Kathryn Eddy ("Claimants") and Respondents Merrill Lynch, Josefin Glock ("Glock"), and James J. Hartigan ("Hartigan") agree and stipulate as follows:

A. Claimants have brought certain claims against Merrill Lynch, Neil J. Surgenor ("Surgenor"), Glock and Hartigan (collectively "Respondents") before NASD Dispute Resolution ("NASD-DR") for arbitration and resolution, and that matter was assigned Claim No. 02-06427.

B. The Respondents denied all material allegations of Claimants' claims.

C. During the pendency of this matter, the parties conducted discovery and investigated Claimants' allegations and Respondents' defenses.

D. During the pendency of this matter, respondent Surgenor filed for protection under the federal bankruptcy statutes, whereupon NASD-DR informed Claimants that they could no longer proceed against Surgenor in this arbitration proceeding.

E. The parties have now entered into a Confidential Settlement Agreement and General Release (the Settlement Agreement) regarding Claimants' claims against Respondents. Pursuant to the Settlement Agreement, Claimants have dismissed Glock and Hartigan from these proceedings with prejudice.

F. Glock and Hartigan did not make any monetary contribution to the settlement.

G. After conducting discovery and completing their investigation, the parties stipulate that the following facts are undisputed.

1. During the period called into question by Claimants' allegations, Claimants had three financial advisors at Merrill Lynch: (1) Neil J. Surgenor, from early 1999 to May 2000;
(2) Josefin Glock, from May 2000 to October 2000; and
(3) James J. Hartigan, from October 2000 to August 2001;
2. For the most part, Eddy complains about a decline in the value of two

- positions that he acquired elsewhere and transferred to Merrill Lynch, i.e., positions in Rockwell and Conexant, which decline occurred at least in part while Surgenor was his Merrill Lynch financial advisor;
3. Claimants also complain about certain transactions that occurred while Surgenor was his Merrill Lynch financial advisor;
 4. However, during the period that Glock served as Claimants' Merrill Lynch financial advisor, there was no purchase or sale activity in Claimants' Merrill Lynch accounts;
 5. During the period that Hartigan served as Claimants' Merrill Lynch financial advisor, there was no purchase or sale activity in Claimants' Merrill Lynch accounts, except for the sale of one investment, which Hartigan advised Claimants to sell in order to generate a tax loss, which advice Claimants now acknowledge to be suitable.

H. Based on the foregoing, Respondents contend that the claims against Glock and Hartigan were without factual basis (although that fact would not have been obvious to Claimants at the time they filed their Statement of Claim);

I. In light of the foregoing undisputed facts, Claimants are desirous that their complaint against Glock and Hartigan be expunged from Glock's and Hartigan's Forms U-4, U-5 and any other report or reporting document, and they further agree that it is appropriate that this matter be so expunged.

WHEREFORE, through their respective counsel of record, Claimants and Merrill Lynch, Glock and Hartigan hereby stipulate to, and seek the arbitrators' approval of, the following order:

1. The arbitration denominated George A. Eddy, et al. v. Merrill Lynch, James J. Hartigan, Josefina Glock and Neil J. Surgenor, Claim No. 02-06427, is hereby dismissed in its entirety with prejudice.

2. The Panel recommends and directs that all references to the complaints of the Claimants or the claim filed by them be expunged from the records of Respondents Glock and Hartigan maintained by the NASD in its Central Registration Depository ("CRD"), with the understanding that, pursuant to NASD Notice to Members 99-09, NASD will not execute the expungement directive until the arbitration award is confirmed by a court of competent jurisdiction.

3. All other relief not expressly granted is denied.

4. Merrill Lynch shall bear any additional forum costs or forum fees charged by the NASD in connection with any proceedings that occur in connection with this Stipulation or otherwise occur in connection with Merrill Lynch's effort to obtain expungement of this matter

from Glock's and Hartigan's CRD records.

AWARD

After considering the preceding Stipulation of the parties, the Panel has decided in full and final resolution of the issues submitted for determination, as follows:

1. The arbitration claim is dismissed with prejudice against all Respondents.
2. The Panel recommends the expungement of all reference to this Arbitration from the registration records of James J. Hartigan and Josefina Glock maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, said Respondents must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its own costs, including attorney's fees.
4. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$500.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

Respondent Merrill Lynch agreed to pay the \$1,200.00 adjournment fee in connection with the adjourned hearing dates of March 1-5, 2004.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00
Pre-hearing conference: June 19, 2003 1 session

Total Forum Fees = \$1,200.00

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

The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents, Merrill Lynch, Hartigan and Glock.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 1,100.00
<u>Less Payments</u>	<u>= \$ (1,700.00)</u>
Refund Due Claimants	= \$ (600.00)

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 9,750.00
<u>Less Payments</u>	<u>= \$ (8,000.00)</u>
Balance Due NASD-DR	= \$ 1,750.00

3. Respondents Merrill Lynch, Hartigan and Glock are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 600.00
<u>Less Payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD-DR	= \$ 600.00

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

Parties' Counsel's Signatures

DATED: April __, 2004

Michael Harrington
LAW OFFICES JAMES J. SELTZER
Attorneys for Claimants George and Kathryn Eddy


DATED: April __, 2004

Kenneth C. Mennemeier
MENNEMEIER, GLASSMAN & STROUD LLP
Attorneys for Respondents Merrill Lynch, Pierce,
Fenner & Smith, Inc., Josefina Glock and James J.
Hartigan

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Parties' Counsel's Signatures

June
DATED: April 22, 2004



Michael Harrington
LAW OFFICES JAMES J. SELTZER
Attorneys for Claimants George and Kathryn Eddy

DATED: April __, 2004

Kenneth C. Mennemeier
MENNEMEIER, GLASSMAN & STROUD LLP
Attorneys for Respondents Merrill Lynch, Pierce,
Fenner & Smith, Inc., Josefina Glock and James J.
Hartigan

Parties' Counsel's Signatures

DATED: April __, 2004

Michael Harrington
LAW OFFICES JAMES J. SELTZER
Attorneys for Claimants George and Kathryn Eddy

DATED: April 2, 2004

Kenneth C. Mennemeier
Kenneth C. Mennemeier
MENNEMEIER, GLASSMAN & STROUD LLP
Attorneys for Respondents Merrill Lynch, Pierce,
Fenner & Smith, Inc., Josefina Glock and James J.
Hartigan

ARBITRATION PANEL

Michael J. Fish, Esq.	-	Public Arbitrator, Presiding Chair
Bruce T. Mitchell, Esq.	-	Public Arbitrator
Linda H. Perry-Cabrera	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael J. Fish, Esq.
Chair, Public Arbitrator

6/28/04

Signature Date

Bruce T. Mitchell, Esq.
Public Arbitrator

Signature Date

Linda H. Perry-Cabrera
Non-Public Arbitrator

Signature Date

7/06/04

Date of Service

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Linda H. Perry-Cabrera	-	Non-Public Arbitrator

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Bruce T. Mitchell, Esq.
Public Arbitrator


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Non-Public Arbitrator

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Signature Date

Signature Date



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Michael J. Fish, Esq.
Chair, Public Arbitrator

Signature Date

Bruce T. Mitchell, Esq.
Public Arbitrator

Signature Date



Linda H. Perry-Cabrera
Non-Public Arbitrator

7/1/04

Signature Date

7/06/04

Date of Service