
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Joseph Crawford

Case Number: 02-06659

Names of the Respondents
Merrill Lynch
Eric MacDonnell
David MacDonnell
Matthew Chalfant

Hearing Site: Tampa, Florida

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

REPRESENTATION OF PARTIES

For Joseph Crawford, hereinafter referred to as "Claimant": J. Benton Stewart, II, Esq., The Stewart Law Group, P.L., Tampa, Florida.

For Merrill Lynch ("ML"), Eric MacDonnell ("EM"), David MacDonnell ("DM") and Matthew Chalfant ("MC"), hereinafter collectively referred to as "Respondents": Lillian Real, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida and Ira Oring, Esq., Fedder and Garten, P.A., Baltimore, Maryland.

CASE INFORMATION

Statement of Claim filed on or about: November 1, 2002.
Claimant signed the Uniform Submission Agreement: August 20, 2002.
Statement of Answer filed by Respondents on or about: January 23, 2003.
Respondent ML signed the Uniform Submission Agreement: December 17, 2002.
Respondent DM signed the Uniform Submission Agreement: January 27, 2003.
Respondent MC signed the Uniform Submission Agreement: February 13, 2003.
Respondent EM signed the Uniform Submission Agreement: March 5, 2003.

CASE SUMMARY

Claimant asserted the following causes of action against Respondents: unsuitability; misrepresentation and omission of facts; breach of fiduciary duty; and violation of Article III of the NASD Rules of Fair Practice. Claimant further asserted the cause of action of failure to supervise against Respondent ML. The causes of action relate to the purchase in Claimant's accounts of unspecified technology stocks and foreign securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages and combined interest in the amount of \$319,000.00, plus special credit, commissions, mark up/down, or added credits, or disgorgement, plus all costs and fees, and an unspecified amount of punitive damages.

Respondents requested that the Statement of Claim be dismissed, that all references to this arbitration be expunged from Respondents EM's, DM's and MC's registration records maintained by the NASD Central Registration Depository ("CRD"), and that Respondents be awarded their costs, forum fees, and such other and further relief as the Panel deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 26, 2003, Claimant filed with NASD Dispute Resolution a notice of dismissal, with prejudice, of Respondents EM and DM from this matter.

During the evidentiary hearing, at the close of Claimant's case-in-chief, Respondents ML and MC moved to dismiss all claims. The Panel granted Respondents' motion to dismiss all claims except the claim of unsuitability.

The parties 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 testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds in favor of Respondents ML and MC and against Claimant on all claims asserted herein. Claimant's claims are denied in their entirety.

During closing argument, Respondents ML and MC asserted that Claimant's claims were so wholly without merit as to be frivolous. While the Panel determined that the claims were without merit, the Panel specifically finds that there was an arguable basis for Claimant's claims, and thus, the claims were not frivolous.

The Panel finds that the customer complaints at issue in this matter were without merit and thus the reference to the customer complaint in the Central Registration Depository ("CRD") record is defamatory in nature. Therefore, the Panel recommends the expungement of all references to the above captioned arbitration from Respondent MC's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent MC must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel denies the request that it recommend expungement of this customer complaint against Respondents DM and EM, on two grounds. First, since Respondents DM and EM were dismissed by Claimant before the hearing, the Panel does not believe it still has jurisdiction over them any longer such that it could recommend such expungement. Second, to the extent that such jurisdiction nonetheless remained vested with the Panel, the Panel did not hear sufficient evidence to rebut Claimant's claim of possible wrongdoing by Respondents DM and EM. While the Panel does not rule that Respondents DM and EM actually did anything wrong, the Panel cannot say with sufficient certainty that the claims brought by Claimant against them were so lacking in merit as to constitute defamatory information when recorded in the CRD system records of them, since the CRD system should also show both the dismissal of the claim by Claimant and – if no settlement proceeds were paid (the Panel does not know and did not inquire) – that no compensation was given to Claimant.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 300.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent ML is a member firm and a party.

Member Surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 8, 9, 10 and 11, 2003; adjournment by Claimant	= \$1,125.00
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Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required

to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

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 the Panel @ \$1,125.00/session = \$3,375.00

Pre-hearing conferences:	May 21, 2003	1 session
	October 1, 2003	1 session
	January 9, 2004	1 session

Five (5) Hearing sessions @ \$1,125.00/session = \$5,625.00

Hearing Dates:	September 20, 2004	2 sessions
	September 21, 2004	2 sessions
	September 22, 2004	1 session

Total Forum Fees = \$9,000.00

The Panel has assessed the total forum fees of \$9,000.00 to Claimant.

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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 9,000.00
Total Fees	= \$ 10,425.00
Less Payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 9,000.00

Respondent ML is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00

<u>Less Payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Christopher M. Shulman, Esq.	-	Public Arbitrator, Presiding Chairperson
Dennis C. Logue	-	Public Arbitrator
Mark M. Mercier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Christopher M. Shulman, Esq.
Public Arbitrator, Presiding Chairperson

September 27, 2004
Signature Date

_____/s/_____
Dennis C. Logue
Public Arbitrator

September 29, 2004
Signature Date

_____/s/_____
Mark M. Mercier
Non-Public Arbitrator

September 24, 2004
Signature Date

September 30, 2004
Date of Service (For NASD Dispute Resolution office use only)

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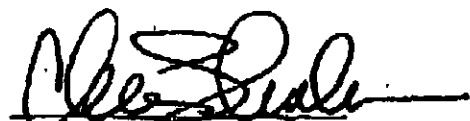
<u>Less Payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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ARBITRATION PANEL

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Dennis C. Logue	-	Public Arbitrator
Mark M. Mercier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Christopher M. Shulman, Esq.
Public Arbitrator, Presiding Chairperson

9/27/04
Signature Date

Dennis C. Logue
Public Arbitrator

Signature Date

Mark M. Mercier
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution

Arbitration No. 02-06659

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<u>Less Payments</u>	= \$ 5,200.00
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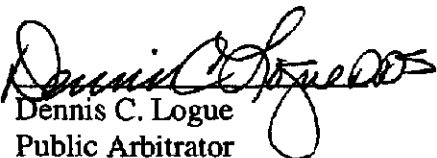
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Dennis C. Logue	-	Public Arbitrator
Mark M. Mercier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Christopher M. Shulman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Dennis C. Logue
Public Arbitrator

9.29.04
Signature Date

Mark M. Mercier
Non-Public Arbitrator

Signature Date

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

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<u>Less Payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Dennis C. Logue	-	Public Arbitrator
Mark M. Mercier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Christopher M. Shulman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Dennis C. Logue
Public Arbitrator

Signature Date



Mark M. Mercier
Non-Public Arbitrator

09/24/2004

Signature Date

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