
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Douglas R. Malsberger, IRA

Case Number: 02-06766

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
William M. Beck

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Douglas R. Malsberger, IRA, referred to as "Claimant": David M. Foster, Esq., David M. Foster, P.C., Farmington Hills, Michigan.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and William M. Beck ("Beck"), collectively referred to as "Respondents": Bennett Falk, Esq. and Julie M. Russo, Esq., Morgan Lewis & Bockius LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 5, 2002.

Claimant signed the Uniform Submission Agreement on: September 24, 2002.

Statement of Answer filed by Respondents on or about: February 11, 2003.

Respondent MLPFS signed the Uniform Submission Agreement on: December 31, 2002.

Respondent Beck signed the Uniform Submission Agreement on: December 30, 2003.

CASE SUMMARY

Claimant alleged the following causes of action: 1) breach of fiduciary duty for recommending unsuitable investments; 2) breach of fiduciary duty by Respondent MLPFS to properly supervise employees; 3) fraudulent misrepresentation; 4) violation of Section 10(b) of the Securities Exchange Act and SEC Rule 10b-5 for making unsuitable recommendations; and 5) violation of Florida Blue Sky Laws, particularly Section 517.301, Florida Statutes. The causes of action relate to investments in various shares of stock including Lucent, EMC, Hewlett Packard, Worldcom, Elan, Microsoft, SBC, AOL, Cisco, Oracle, Intel, and Nortel.

Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$190,300.00; 2) interest; 3) costs; and 4) attorneys' fees.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) assessment of all forum fees against Claimant; and 3) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing, the Panel approved Claimant's ore tenus motion to amend the Statement of Claim. Claimant substituted the allegation of Claimant's investment in AT&T with Intel.

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:

1. Claimant's claims, including any statutory claims, are denied in their entirety.
2. Claimant's request for attorneys' fees is denied.
3. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Beck's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Beck must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all claims or relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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 MLPFS is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 per session	= \$ 900.00
Pre-hearing conferences: June 26, 2003 1 session	
October 7, 2003 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00 per session	= \$1,125.00
Pre-hearing conference: June 10, 2003 1 session	

Three (3) Hearing sessions @ \$1,125.00 per session	= \$3,375.00
Hearing Dates: December 29, 2003 2 sessions	
December 30, 2003 1 session	

Total Forum Fees	= \$5,400.00
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The Panel has assessed forum fees in the amount of \$2,700.00 to Claimant.

The Panel has assessed forum fees in the amount of \$2,700.00 to Respondent MLPFS.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,700.00</u>
Total Fees	= \$3,000.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD	= \$1,575.00

Respondent MLPFS is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$2,700.00</u>
Total Fees	= \$7,900.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD	= \$2,700.00

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

ARBITRATION PANEL

Jacob I. Levine	-	Public Arbitrator, Presiding Chairperson
Susan Jefferbaum Beck	-	Public Arbitrator
Lewis W. Slaughter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

<u>/s/</u>	<u>January 7, 2004</u>
Jacob I. Levine	Signature Date
Public Arbitrator, Presiding Chairperson	
<u>/s/</u>	<u>January 7, 2004</u>
Susan Jefferbaum Beck	Signature Date
Public Arbitrator	
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Non-Public Arbitrator	

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January 8, 2004

Date of Service (For NASD use only)

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Public Arbitrator, Presiding Chairperson

1/7/04
Signature Date

Susan Jefferbaum Beck
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Public Arbitrator

Signature Date

Lewis W. Slaughter
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Non-Public Arbitrator

Signature Date

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 Public Arbitrator, Presiding Chairperson

Signature Date


 Susan Jefferbaum Beck
 Public Arbitrator

1/7/04
 Signature Date

Lewis W. Slaughter
 Non-Public Arbitrator

Signature Date



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Public Arbitrator, Presiding Chairperson

Signature Date

Susan Jefferbaum Beck
Public Arbitrator

Signature Date


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Non-Public Arbitrator

1/7/04
Signature Date