
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Holly Jeske

Case Number: 02-06797

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Holly Jeske, hereinafter referred to as "Claimant": Adam S. Doner, Esq., Gordon & Doner, P.A., Palm Beach Gardens, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), hereinafter referred to as "Respondent": Keith Olin, Esq., Richard A. Burt, Esq. and Julie Russo, Esq., Morgan, Lewis & Bockius LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 7, 2002.

Claimant signed the Uniform Submission Agreement: October 8, 2002.

Statement of Answer filed by Respondent on or about: January 13, 2003.

Respondent signed the Uniform Submission Agreement: February 4, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: 1) fraudulent conduct in violation of Fla. Stat. 517; 2) intentional or otherwise negligent conduct in violation of Section 10(b)(5) of the Securities Exchange Act of 1934; 3) breach of fiduciary duty; 4) failure to exercise compliance, oversight and supervision in violation of Article III, Section 27 of the NASD Rules of Fair Practice and NYSE Rule 405; and, 5) violation of Article III, Section 1 of the NASD Rules of Fair Practice. The causes of action relate to the purchase and sale of various stocks in Claimant's account, including, but not limited to, JDS Uniphase, Tyco Intl., Cisco, Oracle Corp., Sun Microsystems, AVX Corp., Network Appliance, Check Point Software, Nortel Networks, Corning and Xilinx.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$226,186.00, interest, reimbursement of

commissions and fees, costs, expenses and disbursements, including reasonable attorneys fees and expert witness fees, and for such other relief as the Panel deemed just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety, assessment of all forum fees against Claimant, attorney's fees pursuant to Fla. Statutes, Sections 57.105 and 517.211(6) in an amount to be determined by a court of competent jurisdiction and such other and further relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Arbitrator Gerald Birnbaum did not appear for the final hearing of this matter. Pursuant to the parties' mutual agreement, the final hearing proceeded with two arbitrators present.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable for negligent conduct, breach of fiduciary duty and failure to exercise compliance, oversight and supervision and shall pay to Claimant compensatory damages in the amount of \$161,000, plus pre-judgment interest at the rate of 9% per annum from July 1, 2000 until July 1, 2001 and at the rate of 6% per annum thereafter until November 30, 2002 in the amount of \$29,946.00.

Respondent is found liable and shall pay to Claimant costs in the amount of \$20,000.00.

Respondent is found liable and shall reimburse Claimant her NASD Dispute Resolution filing fee in the amount of \$300.00.

Any and all claims for relief not specifically addressed herein, including the parties' requests for attorney's fees and Claimant's request for relief asserting fraudulent conduct in violation of Florida Statute Section 517, 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

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 is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

Adjournment Fees

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 18, 2003 1 session	
Two (2) Hearing sessions with the Panel @ \$1,125.00	= \$2,250.00
Hearing Date: December 8, 2003 2 sessions	
Total Forum Fees	= \$2,700.00

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

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

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

Michael D. Hamilton

-

Public Arbitrator, Presiding Chairperson

Dominic P. Romano

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

Michael D. Hamilton

Public Arbitrator, Presiding Chairperson

12/10/03

Signature Date

/s/

Dominic P. Romano

Non-Public Arbitrator

12/10/03

Signature Date

12/11/03

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

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Michael D. Hamilton
Dominic P. Romano

Public Arbitrator, Presiding Chairperson
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael D. Hamilton
Michael D. Hamilton
Public Arbitrator, Presiding Chairperson

December 10th, 2003
Signature Date

Dominic P. Romano
Non-Public Arbitrator

Signature Date

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Michael D. Hamilton

Signature Date

Public Arbitrator, Presiding Chairperson



Dominic P. Romano


Signature Date

Non-Public Arbitrator

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