

**Stipulated Award
NASD Dispute Resolution**

COPY

In the Matter of the Arbitration Between:

Hector Lamas and Leila Lamas, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Scott C. Brown and Alan Mattes, Jr., Respondents

Case Number: 02-06883

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Mitchell S. Ostwald, Esq.
Law Offices of Mitchell S. Ostwald
Sacramento, California

For Respondents:

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

CASE INFORMATION

Statement of Claim filed: November 13, 2002

Claimants' Uniform Submission Agreement signed: November 13, 2002

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Scott C. Brown and Alan Mattes, Jr.: March 3, 2003

Respondent Merrill Lynch's Uniform Submission Agreement signed: January 21, 2003

Respondent Scott C. Brown's Uniform Submission Agreement signed: March 3, 2003

Respondent Alan Mattes, Jr.'s Uniform Submission Agreement signed: March 3, 2003

CASE SUMMARY

Claimants alleged that the above referenced dispute involves investments in shares of the Merrill Lynch Internet Strategies Fund. Claimants also alleged the following claims: 1) Breach of Fiduciary Duty; 2) Fraud; 3) Constructive Fraud (Civil Code Section 1573); 4) Failure to

Supervise; 5) Elder Abuse; 6) Unfair or Deceptive Practices Against Senior Citizens; and 7) Violation of Federal and State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

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

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in an amount according to proof, but not less than \$100,000.00;
2. Disgorgement and restitution of all earnings, profits, compensation and benefits received by the Respondents as a result of their unlawful acts and practices in an amount according to proof;
3. Lost opportunity cost of what the purchase of \$216,000.00 would have been if suitably invested;
4. Attorney's fees and costs;
5. Pre- and post judgment interest at the legal rate;
6. Punitive damages in an amount according to proof;
7. Treble damages pursuant to California Civil Code Section 3345; and
8. Such other and further relief as the Panel may deem just and proper.

Respondents requested:

1. Dismissal of Claimants' claims;
2. That the Panel assess all hearing fees and costs to the Claimants; and
3. That the Panel order the NASD to expunge this matter from Brown's and Mattes' NASD record.

OTHER ISSUES CONSIDERED AND DECIDED

On March 24, 2003, 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 April 19, 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.

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 Hector and Leila Lamas ("Claimants") and Respondents Merrill Lynch and Scott C. Brown ("Brown") agree and stipulate as follows:

A. Claimants have brought certain claims against Merrill Lynch, Brown, and Alan Mattes, Jr. ("Mattes") (collectively "Respondents") before NASD Dispute Resolution ("NASD-DR") for arbitration and resolution, and that matter was assigned Claim No. 02-06883.

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. 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 agreed to dismiss their claims with prejudice.

E. 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 two financial advisors at Merrill Lynch: (1) Scott C. Brown, from 1997 to January 2000; and (2) Alan Mattes, Jr., from January 2000 to October 2002; and
2. During the period that Brown was their financial advisor, Claimants made the following investments: (a) a total investment of \$200,000 in four high yield bond funds (Merrill Lynch Corporate Bond High Income Fund, Northstar High Total Return Fund, Salomon Brothers High Yield Bond Fund, and Oppenheimer Strategic Income Fund) in February 1998; (b) the rollover from a Select Ten 98A Dow fund into a Select Ten 99A Dow fund in February 1999; (c) an unsolicited purchase of 300 shares of Dell Computer Corp. in November 1999; and (d) an unsolicited purchase of 100 shares of Sun Microsystems Corp. in November 1999;
3. During the period that Mattes was their financial advisor, Claimants liquidated a substantial portion of their holdings in the high yield bond funds and reinvested the proceeds in equity-based mutual funds, including a \$50,000 investment in the Merrill Lynch Internet Strategies Fund in March 2000; and
4. After March 2000, Claimants' equity-based investments declined in value.

F. Respondents contend that the claims against Brown were without factual basis, and on that basis seek an order recommending that this matter be expunged from Brown's CRD records.

G. As part of the settlement, Claimants have agreed not to oppose Respondents' request that a stipulated award be entered, recommending that all references to this matter be expunged from the records of Respondent Scott C. Brown maintained by the NASD Central Registration Depository ("CRD").

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

1. The arbitration denominated Hector Lamas and Leila Lamas vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., Scott C. Brown and Alan Mattes, Jr., Claim No. 02-06883, is hereby dismissed in its entirety with prejudice.

2. The Panel recommends and directs that all references to the Claimants' claim and allegations be expunged from the records of Respondent Brown maintained by the NASD in its 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 Brown'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 Scott C. Brown maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Brown 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 = \$300.00

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 | = \$1,700.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| Hearing Process Fee | = \$2,750.00 |
| Total Member Fees | = \$5,200.00 |

Adjournment Fees

The following adjournment fees are assessed:

Respondent Merrill Lynch agreed to pay the \$1,125.00 adjournment fee in connection with the adjourned hearing dates of February 18-20, 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 a single arbitrator @ \$450.00/session = \$450.00
Pre-hearing conference: December 2, 2003 1 session

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00
Pre-hearing conference: August 19, 2003 1 session

Total Forum Fees = \$1,575.00

The Panel assessed \$787.50 of the forum fees jointly and severally to Claimants.

The Panel assessed \$787.50 of the forum fees jointly and severally to Respondents, Merrill Lynch, Brown and Mattes.

Fee Summary

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

| | |
|----------------------|-----------------|
| Initial Filing Fee | = \$ 300.00 |
| Forum Fees | = \$ 787.50 |
| Total Fees | = \$ 1,087.50 |
| Less Payments | = \$ (1,425.00) |
| Refund Due Claimants | = \$ (337.50) |

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

| | |
|---------------------|-----------------|
| Member Fees | = \$ 5,200.00 |
| Adjournment Fee | = \$ 1,125.00 |
| Total Fees | = \$ 6,325.00 |
| Less Payments | = \$ (5,200.00) |
| Balance Due NASD-DR | = \$ 1,125.00 |

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

| | |
|---------------------|--------------|
| Forum Fees | = \$ 787.50 |
| Less Payments | = \$ (0.00) |
| Balance Due NASD-DR | = \$ 787.50 |

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

Mitchell S. Ostwald
LAW OFFICES OF MITCHELL S. OSTWALD
Attorneys for Claimants Hector and Leila Lamas

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Parties' Counsel's Signatures

DATED: April 21, 2004



Mitchell S. Ostwald
LAW OFFICES OF MITCHELL S. OSTWALD
Attorneys for Claimants Hector and Leila Lamas

DATED: April 23, 2004

Kenneth C. Mennemeier
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MENNEMEIER, GLASSMAN & STROUD LLP
Attorneys for Respondents Merrill Lynch, Pierce,
Fenner & Smith, Inc., Scott C. Brown and Alan
Mattes, Jr.

ARBITRATION PANEL

| | | |
|--------------------------|---|------------------------------------|
| James D. Hadfield, Esq. | - | Public Arbitrator, Presiding Chair |
| Joseph M. O'Connor, P.E. | - | Public Arbitrator |
| Jerold R. Babin | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

James D. Hadfield, Esq.
Chair, Public Arbitrator

Signature Date

Joseph M. O'Connor, P.E.
Public Arbitrator

Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

7/21/04
Date of Service

DATED: April 23, 2004

Kenneth C. Mennemeier
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MENNEMEIER, GLASSMAN & STROUD LLP
Attorneys for Respondents Merrill Lynch, Pierce,
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Signature Date

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Date of Service

DATED: April 23, 2004

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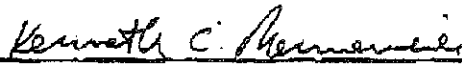
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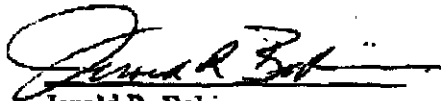
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