
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Sal Tusa, individually and as Trustee of the
Revocable Trust Agreement of Salvatore P. Tusa
U/A DTD 11/30/99

Case Number: 02-06993

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Kevin Tritsch

Hearing Site: Boca Raton, FL

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

REPRESENTATION OF PARTIES

For Sal Tusa ("Tusa") individually and as Trustee of the Revocable Trust Agreement of Salvatore P. Tusa U/A DTD 11/30/99 ("Tusa Trust"), hereinafter referred to as "Claimant":
Randall W. Henley, Esq., West Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Kevin Tritsch ("Tritsch") hereinafter referred to as "Respondents": Keith Olin, Esq. and Jill Dokson, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 18, 2002.

Claimant signed the Uniform Submission Agreement: November 15, 2002.

Statement of Answer filed by Respondents on or about: February 14, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: December 19, 2002.

Respondent Tritsch did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged that Respondents recommended an unsuitable trading strategy for Claimant's stated investment objectives and that Claimant sustained losses as a result of Respondents' recommendations. Claimant alleged various causes of action including intentional and/or negligent misrepresentation, breach of fiduciary duty and negligence. The causes of action relate to the purchase of the following mutual funds: Goldman Sachs Internet Tollkeeper Fund B, MFS Research Fund B, Mass Investors Growth Fund B, Alliance Premier Growth Fund B and Putnam New Opportunities Fund B.

Respondents denied the allegations in the Statement of Claim. Respondents contended that any losses incurred by Claimant resulted from Claimant's own decisions. Further, Claimant was fully

apprised of and understood and knowingly accepted the risks involved in the investments, failed to mitigate damages and ratified all purchases and sales in his account.

RELIEF REQUESTED

Claimant requested damages of an amount greater than \$100,000.00 but less than \$500,000.00, plus interest and costs.

Respondents requested dismissal of the Statement of Claim in its entirety with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Tritsch did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

On or about April 30, 2004, Claimant advised NASD Dispute Resolution that the parties had reached a full and final settlement of the arbitration proceeding.

On or about May 24, 2004, the parties submitted a proposed Stipulated Award which requested that this matter be expunged from the registration records of Respondent Tritsch maintained by the NASD Central Registration Depository ("CRD").

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

AWARD

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed in its entirety without any findings of fault or liability on the part of Respondents MLPFS and Tritsch.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Tritsch's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Tritsch must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. Each party shall bear its respective costs, including attorney's fees.
4. All other requests for relief, which are not addressed specifically in this Award, are denied, with prejudice.

FEES

Pursuant to 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 RBC 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

No adjournments were granted 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.

No injunctive relief fees were incurred 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: June 25, 2003	1 session
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Total Forum Fees	= \$1,125.00

The Panel has assessed \$562.50 of the forum fees to Claimant.

The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

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
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	<u>= \$ 862.50</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Mauricio Arcadier, JD	-	Public Arbitrator, Presiding Chairperson
Burton Katz, Esq.	-	Public Arbitrator
Jay L. Valinsky, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Mauricio Arcadier, JD
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Burton Katz, Esq.
Public Arbitrator

Signature Date

/s/
Jay L. Valinsky
Non-Public Arbitrator

Signature Date

August 20, 2004
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 02-06993
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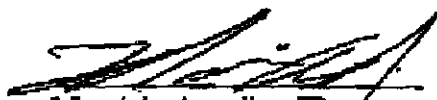
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Burton Katz, Esq.	-	Public Arbitrator
Jay L. Valinsky, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Mauricio Arcadier, JD
Public Arbitrator, Presiding Chairperson

8/9/4
Signature Date

Burton Katz, Esq.
Public Arbitrator

Signature Date

Jay L. Valinsky
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution
Arbitration No. 02-06993
Stipulated Award Page 4

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Respondent MLPPS is solely liable for:

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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Burton Katz, Esq.	-	Public Arbitrator
Jay L. Valinsky, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mauricio Arcadier, JD
Public Arbitrator, Presiding Chairperson

Signature Date



Burton Katz, Esq.
Public Arbitrator

8-15-04

Signature Date

Jay L. Valinsky
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution
 Arbitration No. 02-06993
Stipulated Award Page 4

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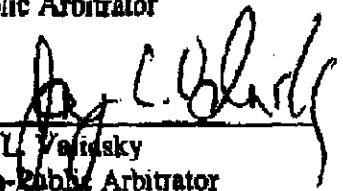
Concurring Arbitrators' Signatures

 Mauricio Arcadier, JD
 Public Arbitrator, Presiding Chairperson

 Signature Date

 Burton Katz, Esq.
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 Signature Date


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