

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jurgen Dejewski and Elsa Dejewski, Jurgen Dejewski IRA, and Elsa Dejewski IRA (Claimants)
v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and David J. Cottam (Respondents)

Case Number: 02-07333

Hearing Site: New York, NY

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

REPRESENTATION OF PARTIES

Claimants, Jurgen Dejewski and Elsa Dejewski ("J. and E. Dejewski"), Jurgen Dejewski IRA ("J. Dejewski") and Elsa Dejewski IRA ("E. Dejewski IRA") hereinafter collectively referred to as "Claimants": Sheldon H. Gopstein, Esq., Law Offices of Sheldon H. Gopstein, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and David J. Cottam, ("Cottam"), hereinafter collectively referred to as "Respondents": Francis M. Curran, Esq., Akerman Senterfitt, Tampa, FL. Previously represented by: Francis M. Curran, Esq., Francis M. Curran, P.A., Clearwater, FL.

CASE INFORMATION

Statement of Claim filed on or about: November 26, 2002.

Claimants signed the Uniform Submission Agreement: November 13, 2002.

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

Respondent Merrill Lynch signed the Uniform Submission Agreement: January 23, 2003

Respondent Cottam did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: 1) unsuitability; 2) negligence; 3) breach of fiduciary duty; 4) misrepresentation; 5) breach of contract; 6) common law fraud; 7) securities fraud; 8) control person liability; 9) *respondeat superior*; 10) apparent authority; and, 11) failure to supervise. The causes of action relate to the purchase and sale of various unspecified stocks in Claimants' accounts.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$177,771.33, plus commissions, asset management fees, interest, NASD fees, attorneys' fees and costs, and such other and further relief as may be just, proper, and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded such other relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 6, 2004, the parties notified NASD Dispute Resolution that they had amicably resolved this matter. The parties further requested that the Panel not be disbanded, as the parties would be forwarding a stipulation between the parties agreeing to the expungement of Respondent Cottam's NASD Central Registration Depository ("CRD") record.

On April 2, 2004, the parties submitted to NASD Dispute Resolution a proposed, Stipulated Award with a request for expungement of the NASD CRD record of Respondent Cottam.

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

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent David J. Cottam's registration records maintained by the NASD Central Registration Depository, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Cottam must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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, Merrill Lynch 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

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 conference sessions with the Panel @ \$1,125.00/session = \$2,250.00

Pre-hearing conferences: October 2, 2003 1 session
 November 6, 2003 1 session

Total Forum Fees = \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,425.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Merrill Lynch 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

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,125.00
<u>Less payments</u>	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

Jurgen Dejewski
Claimant

Signature Date

Elsa Dejewski
Claimant

Signature Date

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Respondent

Signature Date

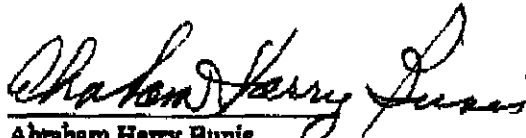
David J. Cottam
Respondent

Signature Date

ARBITRATION PANEL

Abraham Harry Bunis	-	Public Arbitrator, Presiding Chair
Bruce Sanders, Esq.	-	Public Arbitrator
Charles H.B. Braisted	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Abraham Harry Bunis
Public Arbitrator, Presiding Chair


Signature Date

Bruce Sanders, Esq.
Public Arbitrator

Signature Date

Charles H.B. Braisted
Industry Arbitrator

Signature Date

June 14, 2004
Date of Service (For NASD office use only)

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