

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Robert N. and Margot G. Boll, JTWROS

Case Number: 02-07563

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.
Richard Bradley Watson

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Robert N. and Margot G. Boll ("Bolls"), hereinafter referred to as "Claimants": Richard A. Stephens, Esq., Boca Raton, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFSI") and Richard Bradley Watson ("Watson"), hereinafter referred to as "Respondents": Leland D. Barringer and Clarence L. Pozza, Jr., Miller, Canfield, Paddock and Stone, PLC, Detroit, Michigan.

CASE INFORMATION

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

Claimants signed the Uniform Submission Agreement: December 5, 2002.

Statement of Answer filed by Respondents on or about: February 21, 2003.

Respondent MLPFSI signed the Uniform Submission Agreement: January 21, 2003.

Respondent Watson signed the Uniform Submission Agreement: December 3, 2003.

Claimants' Reply to Affirmative Defenses filed on or about: March 6, 2003.

Respondents' Motion to Change Hearing Location filed on or about: February 21, 2003.

Claimants' Opposition to Motion to Change Venue filed on or about: March 26, 2003.

Claimants' Motion to Expedite Arbitration Proceedings filed on or about: March 8, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: 1) violation of Chapter 517, Florida Statutes and Florida Administrative Code, Chapter 3E-600.002(2); 2) Florida common law fraud and breach of fiduciary duty; 3) fraud under Securities Exchange Act Sections 10(b) and 15(c)(1)(a) and SEC Rules 10(b)-5 and Rule 10(b)-3; 4) rescission; 5) manipulative, deceptive and fraudulent devices; 6) violation of NASD Conduct Rule of fair dealing and fraudulent activity; 7) unsuitability; 8) violation of NASD Conduct Rule 2330(e) prohibiting guarantees; 9) violation of NASD Conduct Rule 2110: commercial honor and principles of trade; 10) negligence and gross negligence; 11) breach of contract; 12) negligent supervision; 13) respondeat superior liability; 14) control person liability; and 15) punitive damages under Florida Statutes, Section 768.73. The causes of action relate to the purchase of shares of

stock, including purchases made on margin, of: America Online, Inc., Commerce One, Inc., Calpine Corp., Clear Channel Communications, Exodus Communications, Inc., Legato Systems, Inc., Oracle Corp., Pacificare Health Systems, Qiao Xing Universal Tel., Qualcomm, Inc., Real Networks, Inc., Solecron Corp., Sun Microsystems, Inc., and Veritas Software.

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

RELIEF REQUESTED

Claimants requested compensatory damages of not less than \$611,000.00 as rescission damages, plus disgorgement of commissions, punitive damages of \$500,000.00, attorney's fees, pre-judgment interest, the costs of this proceeding, referral for disciplinary action, that "actual fraud" and/or "fraud while acting in a fiduciary capacity" be mentioned specifically as the basis in any written Judgment to survive any discharge in bankruptcy in the event any Respondent files a bankruptcy petition, an explanation of the basis for any punitive damage award and such other relief as is deemed just and proper.

Respondents requested that all claims against them be dismissed and such other and further relief as is deemed just and proper. At the conclusion of the evidentiary hearing, Respondent Watson requested that all references to this matter be expunged from his NASD Central Registration Depository ("CRD") record.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents' Motion to Change Hearing Location was administratively denied on April 24, 2003. No further objections to the hearing location were raised with the arbitration panel.

In response to Claimants' Motion to Expedite Arbitration Proceedings, the parties submitted agreed upon dates for the Initial Prehearing Conference.

Respondents' Request that Arbitrators Hoppenstein and Rosenberg Withdraw from the Panel was denied by Order dated September 12, 2003. Respondents continued objection to arbitrators Abe Hoppenstein and Lester Rosenberg was raised at the commencement of the evidentiary hearing on December 1, 2003.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents MLPFSI and Watson are jointly and severally liable and shall pay

to Claimants the sum of \$625,601.00 in compensatory damages, plus interest at the rate of five percent (5%) per annum from September 29, 2000 until December 3, 2003. Damages are awarded based upon the following:

- a. Respondent Watson's negligence in filling out Respondent MLPFSI's forms which did not correctly spell out Claimants financial status and present employment situation.
 - b. Respondent MLPFSI's administration manger never obtained information to verify forms filled out by Respondent Watson.
 - c. Respondents violated Respondent MLPFSI's compliance manuals.
 - d. Respondents violated NASD and NYSE rules including their latest directive on margin accounts.
 - e. Respondents did not fulfill their fiduciary duties as spelled out by statutes. Additionally, the panel finds clear and convincing evidence that Respondent MLPFSI was negligent.
 - f. Respondent MLPFSI permitted violations of its own rules and regulations.
 - g. Respondent MLPFSI provided poor training of its administrative staff and investment advisors.
 - h. Respondent MLPFSI improperly supervised its broker, Respondent Watson and Claimants' account by permitting excessive margin debt.
 - i. Respondent MLPFSI took no steps to prevent violations of NASD and NYSE Rules and the Securities Exchange Act of 1934.
2. Respondent MLPFSI is liable and shall pay to Claimants the sum of \$938,400.00 in punitive damages. The Panel found, pursuant to Florida Statutes Section 768.72 and 768.737, clear and convincing evidence of gross negligence by Respondent MLPFSI, as set forth above. The Panel specifically finds that Respondent MLPFSI engaged in conduct that constituted gross negligence and that contributed to the loss suffered by the Claimants. The Panel specifically finds that Respondent MLPFSI was grossly negligent in its training of Respondent Watson.
 3. Respondent Watson's request for expungement of this matter from his registration records maintained by NASD CRD is denied.
 4. Claimants' requests for relief pursuant to Florida Statutes Chapter 517 are specifically denied.
 5. Any and all claims for relief not specifically addressed herein, including requests for attorneys' fees, are denied.

FEEES

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 = \$ 500.00

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, MLPFSI is a member firm and a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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, H&R Block is a member firm and was Respondent Watson's former firm.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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 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 Panel @ \$1,200	= \$1,200.00
Pre-hearing conference: July 23, 2003	1 session
Seven (7) Hearing sessions @ \$1,200.00	= \$8,400.00
Hearing Dates: December 1, 2003	2 sessions
December 2, 2003	2 sessions
December 3, 2003	3 sessions

Total Forum Fees = \$9,600.00

The Panel has assessed \$4,800.00 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$4,800.00 of the forum fees to Respondent MLPFSI.

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 fees were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 4,800.00</u>
Total Fees	= \$ 5,300.00
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00

Respondent MLPFSI is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 4,800.00</u>
Total Fees	= \$13,350.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,800.00

H&R Block is solely liable for:

Member Fees	= \$8,550.00
<u>Total Fees</u>	<u>= \$8,550.00</u>
<u>Less payments</u>	<u>= \$8,550.00</u>
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

Lester M. Rosenberg	- Public Arbitrator, Presiding Chairperson
Abe S. Hoppenstein, LL.B	- Public Arbitrator
Leonard G. Cohen	- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Public Arbitrator, Presiding Chairperson

Signature Date

Public Arbitrator

Signature Date

Non-Public Arbitrator

Signature Date

January 2, 2004

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

Concurring Arbitrators' Signatures

Lester M. Rosenberg
Lester M. Rosenberg
Public Arbitrator, Presiding Chairperson

12/31/03
Signature Date

Abe S. Hoppenstein, I.L.B.
Public Arbitrator

Signature Date

Leonard G. Cohen
Non-Public Arbitrator

Signature Date

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

Concurring Arbitrators' Signatures

Lester M. Rosenberg
Public Arbitrator, Presiding Chairperson



Abe S. Hoppenstein, LL.B.
Public Arbitrator

Signature Date



1.1.2004

Signature Date

Leonard G. Cohen
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators

Leonor M. Rosenberg
Public Arbitrator, Chairperson

Signature Date

Abel S. Hoppenstein
Public Arbitrator

Signature Date

Leonard G. Cohen
Leonard G. Cohen
Non-Public Arbitrator

12-31-03
Signature Date

Date of Service (For dispute resolution office use only)