
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
Orlando and Maria Quintero

Case Number: 02-07666

Names of the Respondents
Merrill Lynch Pierce Fenner & Smith, Inc.
and Patrick J. Dwyer

Hearing Site: Boca Raton, Florida.

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

REPRESENTATION OF PARTIES

For Orlando and Maria Quintero, hereinafter collectively referred to as "Claimants": Matthew L. Jones, Esq., Jones & Adams, P.A., Miami, Florida.

For Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and Patrick J. Dwyer ("Dwyer"), hereinafter collectively referred to as "Respondents": Alex J. Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: December 10, 2002.
Claimants signed the Uniform Submission Agreement: January 20, 2003.
Statement of Answer filed by Respondents on or about: March 28, 2003.
Respondent Merrill signed the Uniform Submission Agreement: May 21, 2003.
Respondent Dwyer did not submit an executed Uniform Submission Agreement.
Amended Statement of Claim filed by Claimants on or about: July 10, 2003.
Answer to Amended Statement of Claim filed by Respondents on or about: August 8, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violation of Section 517.301 of the Florida Statutes; churning; unsuitability; breach of fiduciary duty; unauthorized trading; negligence; unauthorized trading; and, failure to supervise. The causes of action relate to the purchase and sale of numerous securities in Claimants' account including, but not limited to, shares of the following: Allied Zurich; Astrazeneca; Aventis; Bank of America Corp.; Diageo; Du Pont; Nestle; Unilever; and, SBC Communications, Inc.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$250,000.00, interest, attorney's fees pursuant to Chapter 517.211 of the Florida Statutes, costs, punitive damages in the amount of \$250,000.00, damages caused by the tax ramifications to Claimants' account, and any other relief deemed just and proper.

Respondents requested that the Panel find in their favor on all claims brought by Claimants, dismiss the Statement of Claim and Amended Statement of Claim in their entirety, assess all costs and forum fees against Claimants, attorneys' fees, and expungement of Respondent Dwyer's NASD Central Registration Depository (the "CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Dwyer did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determinations of the Panel on all issues submitted.

On or about July 1, 2003, Respondents notified NASD Dispute Resolution that they had no objection to the filing of the Amended Statement of Claim. Thereafter, the Panel accepted the Amended Statement of Claim.

On or about February 14, 2005, during the evidentiary hearing, Respondents asserted an ore tenus Motion to Dismiss Claimants' claim for churning to which Claimants objected. The Panel granted Respondents' Motion to Dismiss with respect to the churning claim.

On or about June 28, 2005, during the evidentiary hearing, Respondents moved to expunge this matter from the NASD CRD records of Respondent Dwyer. Claimants did not object to this request.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are denied in their entirety, including Claimants' claims for relief under Chapter 517 of the Florida Statutes.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dwyer's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Dwyer must obtain

confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and the parties' respective requests for attorneys' fees, are denied.

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 persons at the time of the events giving rise to the dispute. In this matter, Merrill Lynch Pierce Fenner & Smith, Inc. is a member firm and party.

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

Adjournment Fees

Adjournment granted during these proceedings:

February 3-5, 2004, joint mediation adjournment request	= \$ 1,125.00
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No adjournment fees were assessed pursuant to Rule 10403 of the Code.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

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 in this matter.

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/session	= \$ 450.00
Pre-hearing conference: December 19, 2003 1 session	
Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: August 4, 2003 1 session	
June 7, 2004 1 session	
Nine (9) Hearing sessions @ \$1,125.00/session	= \$ 10,125.00
Hearing Dates: October 20, 2004 2 sessions	
October 21, 2004 2 sessions	
October 22, 2004 2 sessions	
February 14, 2005 2 sessions	
June 28, 2005 1 session	

Total Forum Fees	= \$ 12,825.00
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The Panel has assessed \$6,412.50 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$6,412.50 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 are 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 in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 6,412.50</u>
Total Fees	= \$ 6,712.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,287.50

Respondent Merrill is solely liable for:

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 6,412.50
<u>Total Fees</u>	= \$ 6,412.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 6,412.50

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

ARBITRATION PANEL

Alan B. Goldstein, Esq.	-	Public Arbitrator, Presiding Chairperson
Elliot Leitner	-	Public Arbitrator
Gerald H. Olin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

08/02/2005

Alan B. Goldstein, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

07/29/2005

Elliot Leitner
Public Arbitrator

Signature Date

/s/

08/01/2005

Gerald H. Olin
Non-Public Arbitrator

Signature Date

08/02/2005

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

NASD Dispute Resolution
Arbitration No. 02-07666
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Respondent Merrill is solely liable for:

Member Fees	= \$ 5,200.00
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Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Public Arbitrator, Presiding Chairperson

8/2/05
Signature Date

Elliot Leitner
Public Arbitrator

Signature Date

Gerald H. Olin
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
 Arbitration No. 02-07666
 Award Page 5

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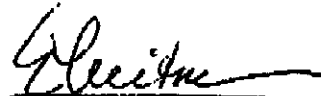
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Alan B. Goldstein, Esq.
 Public Arbitrator, Presiding Chairperson

Signature Date



Elliot Leitner
 Public Arbitrator

7/29/05
 Signature Date

Gerald H. Olin
 Non-Public Arbitrator

Signature Date

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Elliot Leitner
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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

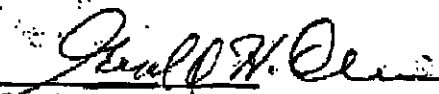
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Signature Date

Elliot Leitner
Public Arbitrator

Signature Date


Gerald H. Olin
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