
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Robert Pratt and Elayne Pratt, individually
and as trustee for the
Robert Pratt IRA and The Elayne Pratt IRA

Case Number: 03-00122

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Robert Pratt and Elayne Pratt, individually and as trustee for the Robert Pratt IRA and The Elayne Pratt IRA, hereinafter collectively referred to as "Claimants": Curtis Carlson, Esq. and Ronald J. Lewittes, Esq., Payton & Carlson, Miami, Florida.

For Merrill Lynch, Pierce, Fenner & Smith ("MLPFS"), hereinafter referred to as "Respondent": Bennett Falk, Esq. and Steven Hemmert, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 7, 2003.

Claimants signed Uniform Submission Agreements: December 20, 2002.

Statement of Answer filed by Respondent on or about: April 15, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: April 20, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) breach of contract; 3) negligence; and 4) gross negligence. The causes of action relate to Claimants' investments in, including but not limited to, EMC Corporations, AT&T, Dell and Applied Materials, Inc.

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

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in excess of \$6,000,000.00; 2) punitive damages; 3)

expert witness costs; and 4) other costs.

Respondents requested: 1) an award dismissing the Statement of Claim in its entirety; and 2) such other and further relief that the undersigned arbitrators (the "Panel") deemed just and proper, including assessment of all forum fees against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of the evidentiary hearing, Respondent made an ore tenus Motion for an Order of Involuntary Dismissal. On or about January 23, 2006, the Panel denied Respondent's Motion for an Order of Involuntary Dismissal.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) Any and all other claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

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	= \$ 600.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPFS is a party and a member firm.

Member Surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,500.00</u>
Total Member Fees	= \$9,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

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:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
August 21, 2003	1 session
December 21, 2005	1 session
Nine (9) Hearing sessions with Panel @ \$1,200.00/session	= \$10,800.00
Hearing Dates:	
September 14, 2005	2 sessions
September 15, 2005	2 sessions
September 16, 2005	1 session
January 23, 2006	2 sessions
January 24, 2006	2 sessions
Total Forum Fees	= \$13,200.00

The Panel has assessed forum fees in the amount of \$13,200.00 to Claimants, jointly and severally.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$13,200.00</u>
Total Fees	= \$13,800.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$12,000.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	<u>= \$ 9,600.00</u>
Total Fees	= \$ 9,600.00
<u>Less payments</u>	<u>= \$ 9,600.00</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

<i>Jeffrey R. Fuller, J.D.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Leslie L. Cooney, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard F. Lang</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

_____/s/_____
Jeffrey R. Fuller, J.D.
Public Arbitrator, Presiding Chairperson

2/8/06
Signature Date

_____/s/_____
Leslie L. Cooney, Esq.
Public Arbitrator

2/7/06
Signature Date

_____/s/_____
Richard F. Lang
Non-Public Arbitrator

2/8/06
Signature Date

NASD Dispute Resolution

Arbitration No. 03-00122

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2/8/06

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

NASD Dispute Resolution

Arbitration No. 03-00122

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There were no administrative costs incurred during these proceedings.

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Concurring Arbitrators' SignaturesJeffrey R. Fuller, J.D.
Public Arbitrator, Presiding Chairperson

2-8-06

Signature Date

Leslie L. Cooney, Esq.
Public Arbitrator_____
Signature Date_____
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Non-Public Arbitrator_____
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NASD Dispute Resolution
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Award Page 4 of 5

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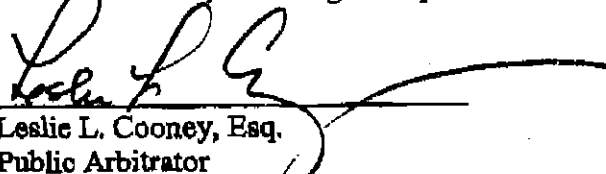
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Richard F. Lang	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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 Public Arbitrator, Presiding Chairperson


 Leslie L. Cooney, Esq.
 Public Arbitrator

 Signature Date

2-7-06
 Signature Date

 Richard F. Lang
 Non-Public Arbitrator

 Signature Date

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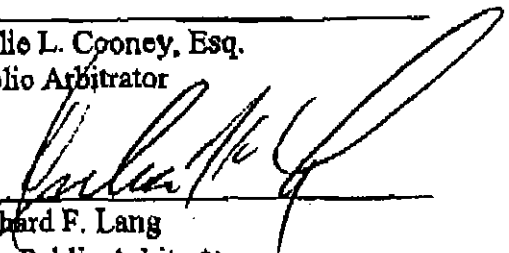
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Public Arbitrator, Presiding Chairperson

Signature Date

Leslie L. Cooney, Esq.
Public Arbitrator

Signature Date



Richard F. Lang
Non-Public Arbitrator

2/8/06

Signature Date