
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Ray Vera and Concepcion Roca Vera, husband and wife

Case Number: 03-00197

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc., a Delaware Corp.
Juan C. Collar

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Ray Vera and Concepcion Roca Vera, husband and wife, hereinafter collectively referred to as "Claimants": Charles D. Franken, Esq., Charles D. Franken, P.A., Plantation, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Juan C. Collar ("Collar"), hereinafter collectively referred to as "Respondents": Neil S. Baritz, Esq., Baritz & Colman LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 13, 2003.

Claimants signed the Uniform Submission Agreement: January 8, 2003.

Statement of Answer filed by Respondents on or about: March 31, 2003.

Respondents did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted the following causes of action: 1) violation of Florida Statute, Chapter 517; 2) breach of fiduciary duty; 3) failure to supervise; 4) breach of contract; 5) common law fraud; and, 6) negligence. The causes of action relate to the purchase and sale of various alleged unsuitable mutual funds in Claimants' account, including, but not limited to, Massachusetts Investors Trust, MFS Managed Fund, Alliance Premier Growth, ML Focus 20, Delaware Select and Mercury U.S. Large Funds.

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 \$108,000.00, statutory interest, arbitration costs and other relief as the Panel deemed proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, that they be awarded their costs, attorney's fees and such other relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about February 16, 2004, the parties notified NASD Dispute Resolution that they had settled this matter and would be submitting a proposed Stipulated Award with a request for expungement of the NASD Central Registration Depository (the "CRD") record of Respondent Collar.

On or about April 15, 2004, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award with request for expungement of the NASD CRD record of Respondent Collar. The parties further informed NASD Dispute Resolution that the parties resolved the issues presented in their pleadings on February 12, 2004. As part of the resolution, Claimants, having learned through discovery that the claims should only have been asserted against Respondent Merrill Lynch, agreed to cooperate with Respondent Collar's efforts to have this action expunged from his NASD CRD record. In connection with the resolution of the claims, the parties further agreed that upon the satisfaction of the terms of resolution, that each of the Claimants and Respondents shall be barred from bringing any action based on or including the claims for which this action has been or could have been brought and that this matter be dismissed, with prejudice, as to all Respondents. The only issue presented to the Panel was this Stipulated Award relating to the expungement.

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

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

Claimants' withdrawal of their claims is accepted and Respondents are dismissed from this matter, with prejudice.

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

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, 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

Adjournment Fees

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

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 a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: December 22, 2003 1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: September 5, 2003 1 session

Total Forum Fees = \$1,575.00

The Panel has assessed \$787.50 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$787.50 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

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 787.50</u>
Total Fees	= \$ 1,087.50
<u>Less payments</u>	<u>= \$ 1,087.50</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch is solely liable for:

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

Respondents Merrill Lynch and Collar are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 787.50</u>
Total Fees	= \$ 787.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 787.50

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

ARBITRATION PANEL

<i>Debra S. Herman, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Don R. Harris</i>	-	<i>Public Arbitrator</i>
<i>Bernard A. D'Amour</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Debra S. Herman, Esq.
Public Arbitrator, Presiding Chairperson

04/20/04
Signature Date

/s/
Don R. Harris
Public Arbitrator

04/20/04
Signature Date

/s/
Bernard A. D'Amour
Non-Public Arbitrator

04/22/04
Signature Date

04/22/04
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 03-00197
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