
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-00581

Joseph Danielle
Linda Danielle
Joseph Danielle IRA
Linda Danielle IRA
Michael Danielle
Michael Danielle IRA
4126, Inc.
4126, Inc. d/b/a M& L Auto Wrecking
Profit Sharing Plan

Names of the Respondents

Hearing Site: Boca Raton, FL

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Steven Weitz

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

REPRESENTATION OF PARTIES

For Joseph Danielle ("JD"), Linda Danielle ("LD"), Joseph Danielle IRA ("JDIRA"), Linda Danielle IRA ("LDIRA"), Michael Danielle ("MD"), Michael Danielle IRA ("MDIRA"), 4126, Inc. ("4126") and 4126, Inc. d/b/a M& L Auto Wrecking Profit Sharing Plan ("4126 PSP"), hereinafter referred to as "Claimants": Russell L. Forkey, Esq., Russell L. Forkey, P.A., Fort Lauderdale, Florida.

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

CASE INFORMATION

Statement of Claim filed on or about: January 24, 2003.

Claimants signed the Uniform Submission Agreement: January 24, 2003.

Supplemental Statement of Claim filed on or about: May 27, 2003.

Statement of Answer filed by Respondents on or about: May 2, 2003.

Respondents' Response to Claimants' Amendment to Statement of Claim filed on or about: July 3, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: March 3, 2004.

CASE SUMMARY

Claimants asserted the following: 1) Respondent MLPFS published research that violated anti-fraud provisions of the Federal Securities Laws; 2) Respondent MLPFS' research analyst were subjected to conflicts of interest; 3) Respondent MLPFS published research that violated NASD and NYSE advertising rules; 4) Respondent MLPFS failed to supervise its research analysts; and 5) Respondent Weitz undertook unsuitable activity in Claimants' accounts. The causes of action relate to purchase of unspecified shares of stock in Claimants' accounts.

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 \$900,000.00, plus interest, costs, punitive damages of \$250,000.00 and such other relief as is deemed just and proper.

Respondents requested that all claims against them be dismissed, that all forum fees be assessed against Claimants and such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Weitz 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 claims, appeared and testified at the hearing, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

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

AWARD

After considering the pleadings, and 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. Respondents are liable and shall pay to Claimant LDIRA the sum of \$6,828.00 in compensatory damages, pre-judgment interest specifically excluded for Respondent MLPFS' failure to supervise and Respondent Weitz's unsuitable activity.
2. Respondents are liable and shall pay to Claimant MDIRA the sum of \$4,601.00 in compensatory damages, pre-judgment interest specifically excluded for Respondent MLPFS' failure to supervise and Respondent Weitz's unsuitable activity.
3. Respondents are liable and shall pay to Claimant MD the sum of \$4,899.00 in compensatory damages, pre-judgment interest specifically excluded for Respondent MLPFS' failure to supervise and Respondent Weitz's unsuitable activity.

4. Respondents are liable and shall pay to Claimants the sum of \$500.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.
5. The claims of Claimants JD, JDIRA, LD, 4126 and 4126 PSP are denied.
6. Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and attorney's 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 | = \$ 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, Respondent MLPFS is a member firm and a party.

| | |
|----------------------------|---------------------|
| Member surcharge | = \$2,800.00 |
| Pre-hearing process fee | = \$ 750.00 |
| <u>Hearing process fee</u> | <u>= \$5,000.00</u> |
| Total Member Fees | = \$8,550.00 |

Adjournment Fees

No adjournment fees were incurred 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.

No three-day cancellation fees were incurred 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.

No injunctive relief fees were incurred 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 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 the Panel @ \$1,200.00 | = \$ 1,200.00 |
| Pre-hearing conferences: September 24, 2003 | 1 session |
| Thirteen (13) Hearing sessions with the Panel @ \$1,200.00 | = \$15,600.00 |
| Hearing Dates: July 13, 2004 | 2 sessions |
| July 14, 2004 | 2 sessions |
| July 15, 2004 | 2 sessions |
| August 2, 2004 | 3 sessions |
| August 3, 2004 | 2 sessions |
| August 28, 2004 | 2 sessions |
| <hr/> | |
| Total Forum Fees | = \$16,800.00 |

The Panel has assessed the total forum fees of \$16,800.00 to Respondent MLPFS.

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 during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

| | |
|-------------------------------------|-------------|
| <u>Initial Filing Fee</u> | = \$ 500.00 |
| <u>Total Fees</u> | = \$ 500.00 |
| <u>Less payments</u> | = \$ 500.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent MLPFS is solely liable for:

| | |
|-------------------------------------|---------------|
| <u>Member Fees</u> | = \$ 8,550.00 |
| <u>Forum Fees</u> | = \$16,800.00 |
| <u>Total Fees</u> | = \$25,350.00 |
| <u>Less payments</u> | = \$ 8,550.00 |
| Balance Due NASD Dispute Resolution | = \$16,800.00 |

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

ARBITRATION PANEL

| | | |
|---------------------|---|--|
| Martin M. Van Luven | - | Public Arbitrator, Presiding Chairperson |
| Melvin Jarolem | - | Public Arbitrator |
| Allen J. Lefton | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

/s/
Martin M. Van Luvan
Public Arbitrator, Presiding Chairperson

September 15, 2004
Signature Date

/s/
Melvin Jarolem
Public Arbitrator

September 15, 2004
Signature Date

Allen J. Lefton
Non-Public Arbitrator

Signature Date

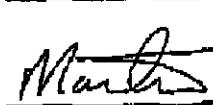

September 17, 2004
Date of Service (For NASD Dispute Resolution office use only)

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ARBITRATION PANEL

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| Melvin Jarolem | - | Public Arbitrator |
| Allen J. Lefton | - | Non-Public Arbitrator |

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Martin M. Van Iken
Public Arbitrator, Presiding Chairperson

Sept 15, 2004
Signature Date

Melvin Jarolem
Public Arbitrator

Signature Date

Allen J. Lefton
Non-Public Arbitrator

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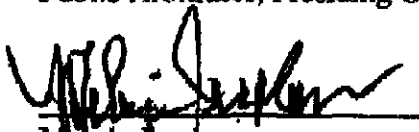
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Public Arbitrator, Presiding Chairperson

Signature Date



Melvin Jarolem
Public Arbitrator



Signature Date

Allen J. Lefton
Non-Public Arbitrator

Signature Date

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