

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert Flocco and Robert Flocco IRA (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Timothy M. Keegan (Respondents)

Case Number: 03-00598

Hearing Site: New York, New York

Nature of the Dispute: Customers v. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants Robert Flocco ("Flocco") and Robert Flocco IRA ("Flocco IRA") hereinafter collectively referred to as "Claimants": Sheldon H. Gopstein, Esq., The Law Offices of Sheldon H. Gopstein, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Timothy M. Keegan ("Keegan") hereinafter collectively referred to as "Respondents": Lawrence D. Ross, Esq., Bressler, Amery & Ross, P.C., Florham Park, NJ.

CASE INFORMATION

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

Claimant Flocco signed the Uniform Submission Agreement: February 14, 2003.

Joint Statement of Answer filed by Respondents on or about: May 9, 2003.

Respondent MLPFS signed the Uniform Submission Agreement.

Respondent Keegan signed the Uniform Submission Agreement: July 1, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duties; breach of contract; negligence; misrepresentation; mis-marking of order tickets; unsuitability; securities fraud; control person liability; respondeat superior; apparent authority; and failure to supervise. Claimants' claim involved various common stock.

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 \$193,307.93, plus

commissions, interest, NASD fees, attorneys' fees and costs, and such other and further relief as may be just, proper, and equitable.

Respondents requested that Claimants' Statement of Claim be dismissed, with prejudice in its entirety, and that the arbitrators award Respondents costs and other further relief as they deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of the hearings in this matter, the Panel permitted the filing of post-hearing briefs. After Respondents filed their brief, Claimants filed a Motion to Strike Respondents' post-hearing briefs. By letter dated August 2, 2004, the parties were notified that, after due deliberation, the Panel determined to deny the Motion to Strike. Accordingly, the parties' respective post-hearing briefs were forwarded to the arbitrators.

The parties have 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent MLPFS is liable for and shall pay to Claimants compensatory damages in the amount of \$15,000.00 based upon MLPFS' lack of supervision.
2. Any and all relief not specifically addressed herein is 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
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

Hearing process fee = \$2,750.00

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 @ \$1,125.00 = \$1,125.00

Pre-hearing conference: October 30, 2003 1 session

Three (3) Hearing sessions @ \$1,125.00 = \$3,375.00

Hearing Date: June 15, 2004 2 sessions

June 16, 2004 1 session

Total Forum Fees = \$4,500.00

The Panel has assessed \$4,500.00 of the forum fees against Respondent MLPFS.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$1,425.00

Refund Due Claimants = \$1,125.00

2. Respondent MLPFS is solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$4,500.00

Total Fees = \$9,700.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$4,500.00

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

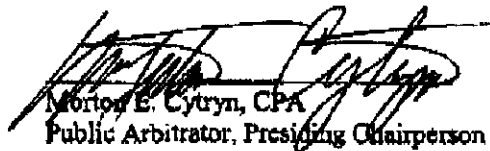
NASD Dispute Resolution
Arbitration No. 03-00598
Award Page 4 of 4

ARBITRATION PANEL

Morton E. Cytryn, CPA	-	Public Arbitrator, Presiding Chairperson
Fern Sue Friedman, Esq.	-	Public Arbitrator
Jacques E. Solun	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.


Morton E. Cytryn, CPA
Public Arbitrator, Presiding Chairperson

8/27/04
Signature Date

Fern Sue Friedman, Esq.
Public Arbitrator

Signature Date

Jacques E. Solun
Non-Public Arbitrator

Signature Date

August 30, 2004
Date of Service (For NASD Dispute Resolution use only)

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Non-Public Arbitrator

8/30/04

Signature Date

August 30, 2004

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