
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Kaye Berzon

Case Number: 03-00684

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Glen Mahnken

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Kaye Berzon, hereinafter referred to as "Claimant": Mark D. Gilwit, Esq., Gilwit & Associates, Boca Raton, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Glen Mahnken ("Mahnken"), 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 21, 2003.

Claimant signed the Uniform Submission Agreement: February 12, 2003.

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

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 16, 2003.

Respondent Mahnken signed the Uniform Submission Agreement: March 11, 2003.

CASE SUMMARY

Claimant asserted the cause of action of failure to execute. The cause of action relates to Respondents' failure to execute orders to sell unspecified securities in Claimant's account and that such conduct constituted negligence.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$32,069.00, reasonable attorney's fees, costs and disbursements and such other and further relief as the Panel deemed just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety and an award of all costs

incurred in the defense of this matter.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 14, 2004, the parties informed NASD Dispute Resolution that they had resolved the issues in this matter. As part of the resolution, Claimant, having learned through discovery that the claims should only have been asserted against Respondent Merrill Lynch, agreed to cooperate with Respondent Mahnken's efforts to have this matter expunged from his NASD Central Registration Depository (the "CRD") record.

On May 18, 2004, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award with request for expungement of the NASD CRD record of Respondent Mahnken.

In connection with the resolution of the claim, the parties agreed that upon the satisfaction of the terms of resolution, that each of the Claimant and Respondents shall be barred from bringing any action based on or including the claims for which this action has 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 request.

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:

- 1) Claimant's withdrawal of her claims is accepted and Respondents are dismissed from this matter, with prejudice.
- 2) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Mahnken's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Mahnken must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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 = \$ 175.00

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

Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

| | |
|-------------------------|--------------|
| Member surcharge | = \$ 875.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$1,000.00 |

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:

| | |
|--|--------------------|
| Two (2) Pre-hearing sessions with the Panel @ \$600.00 | = \$1,200.00 |
| Pre-hearing conferences: September 18, 2003 1 session | |
| April 8, 2004 1 session | |
| <hr/> Total Forum Fees | <hr/> = \$1,200.00 |

The Panel has assessed \$400.00 of the forum fees to Claimant.

The Panel has assessed \$400.00 of the forum fees to Respondent Merrill Lynch.

The Panel has assessed \$400.00 of the forum fees to Respondent Mahnken.

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

Claimant is solely liable for:

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|-------------------------------------|--------------------|
| Initial Filing Fee | = \$ 175.00 |
| <u>Forum Fees</u> | <u>= \$ 400.00</u> |
| Total Fees | = \$ 575.00 |
| <u>Less payments</u> | <u>= \$ 575.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent Merrill Lynch is solely liable for:

| | |
|-------------------------------------|----------------------|
| Member Fees | = \$ 2,625.00 |
| <u>Forum Fees</u> | <u>= \$ 400.00</u> |
| Total Fees | = \$ 3,025.00 |
| <u>Less payments</u> | <u>= \$ 2,625.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 400.00 |

Respondent Mahnken is solely liable for:

| | |
|-------------------------------------|--------------------|
| <u>Forum Fees</u> | <u>= \$ 400.00</u> |
| Total Fees | = \$ 400.00 |
| <u>Less payments</u> | <u>= \$ 0.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 400.00 |

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

ARBITRATION PANEL

| | | |
|-------------------------------|---|---|
| <i>Michael A. Levin, Esq.</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Cheryl E. Winton</i> | - | <i>Public Arbitrator</i> |
| <i>Michele Y. Garelick</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

/s/
Michael A. Levin, Esq.
Public Arbitrator, Presiding Chairperson

06/16/04
Signature Date

/s/
Cheryl E. Winton
Public Arbitrator

05/25/04
Signature Date

/s/
Michele Y. Garelick
Non-Public Arbitrator

06/16/04
Signature Date

06/22/04
Date of Service (For NASD Dispute Resolution office use only)

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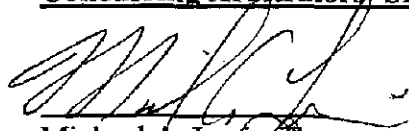
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Michael A. Levin, Esq.
Cheryl E. Winton
Michele Y. Garelick

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael A. Levin, Esq.
Public Arbitrator, Presiding Chairperson

6-16-01

Signature Date

Cheryl E. Winton
Public Arbitrator

Signature Date

Michele Y. Garelick
Non-Public Arbitrator

Signature Date

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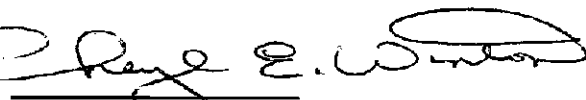
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Concurring Arbitrators' Signatures

Michael A. Levin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Cheryl E. Winton
Public Arbitrator

5/25/04

Signature Date

Michele Y. Garelick
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Public Arbitrator, Presiding Chairperson

Signature Date

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Public Arbitrator

Signature Date

Michele Y. Garelick

Michele Y. Garelick
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6/16/04

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