
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Marvin Blaustein Revocable Trust

Case Number: 03-00711

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Wale Tam

Mitchel Moskowitz

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Marvin Blaustein Revocable Trust, hereinafter referred to as "Claimant": Alan J. Foxman, Esq., The Law Offices of Alan J. Foxman, P.A., Boca Raton, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLF"), Wale Tam ("Tam") and Mitchel Moskowitz ("Moskowitz"), 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 28, 2003.

Claimant signed the Uniform Submission Agreement: January 13, 2003.

Statement of Answer filed by Respondents on or about: May 15, 2003.

Respondent Tam signed the Uniform Submission Agreement: April 10, 2003.

Respondent MLI signed the Uniform Submission Agreement: April 21, 2003.

Respondent Moskowitz signed the Uniform Submission Agreement: May 5, 2003.

CASE SUMMARY

Claimant sued Respondents to recover damages based on allegations of negligence, breach of NASD rules, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, failure to supervise, and suitability. The causes of action relate to the purchase in Claimant's account of the following preferred stocks: Ford Motor Co. Corp., CAPTR1 and TXU Europa Capital.

Unless specifically admitted in their Answer, Respondents denied Claimant's allegations and set forth numerous affirmative defenses to the claims presented.

RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$25,000.00, plus interest, attorneys' fees and costs.

Respondents requested dismissal of Claimant's Statement of Claim and reimbursement of arbitration costs associated with the defense thereof.

OTHER ISSUES CONSIDERED AND DECIDED

The parties resolved the issues presented in their pleadings on June 30, 2004. As part of the resolution, Claimant agreed to dismiss all claims against Respondents Tam and Moskowitz individually, and the claims were settled only against Respondent MLI. Claimant further agreed to cooperate with the efforts of Tam and Moskowitz to have the action expunged from their respective Central Registration Depository ("CRD") records. In connection with the resolution of the claims, the parties agreed that upon satisfaction of the terms of resolution, the Claimant and each of the 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 undersigned arbitrator (the "Arbitrator") was this Stipulated Award relating to expungement.

On or about June 30, 2004, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about July 12, 2004, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for review and approval by the Arbitrator.

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

Based upon the facts presented in the pleadings, motions and other papers in the case, the stipulation of the parties, and the authority of the Arbitrator, it is hereby ordered that:

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

FEES

Pursuant to the NASD Code of Arbitration Procedure Code (the "Code"), of 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 = \$ 125.00

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 MLI is a member firm and a party:

Member surcharge = \$ 425.00

Total Member Fees = \$ 425.00

Adjournment Fees

No adjournments were requested in this matter.

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 Arbitrator.

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session @ \$450.00/session = \$ 450.00

Pre-hearing conference: September 30, 2003 1 session

Total Forum Fees = \$ 450.00

Pursuant to the agreement of the parties, the Panel has assessed forum fees as follows:

\$225.00 to Claimant.

\$225.00 to Respondent MLI.

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 this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 225.00
<u>Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code</u>	<u>= \$ 225.00</u>
Total Fees	= \$ 575.00
<u>Less payments</u>	<u>= \$ 575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLI is solely liable for:

Member Fees	= \$ 425.00
<u>Forum Fees</u>	<u>= \$ 225.00</u>
Total Fees	= \$ 650.00
<u>Less payments</u>	<u>= \$ 425.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

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

ARBITRATOR

Michael D. Felton, Esq.

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

/s/

Michael D. Felton, Esq.
Public Arbitrator, Presiding Chairperson

July 22, 2004
Signature Date

July 23, 2004

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

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