

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Sean Aruda and Patricia Aruda (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Robert E. O'Brien (Respondents)

Case Number: 03-00725

Hearing Site: Boston, Massachusetts

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

REPRESENTATION OF PARTIES

Claimants, Sean Aruda ("S. Aruda") and Patricia Aruda ("P. Aruda") hereinafter collectively referred to as "Claimants": Richard M. Gelb, Esq. and Daniel Hohler, Esq., Gelb & Gelb, LLP, Boston, MA.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("MLPFS") and Robert E. O'Brien ("R. O'Brien") hereinafter collectively referred to as "Respondents": William Manning, Jr., Esq. and Bryan I. Reyhani, Esq., Loeb & Loeb, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 30, 2003.

S. Aruda signed the Uniform Submission Agreement: January 28, 2003.

P. Aruda signed Uniform Submission Agreement: January 28, 2003.

Joint Statement of Answer filed by Respondents on or about: May 28, 2003.

MLPFS signed the Uniform Submission Agreement: May 27, 2003.

R. O'Brien signed the Uniform Submission Agreement: May 28, 2003.

CASE SUMMARY

Claimants alleged that they were unsophisticated investors with respect to the industries they were recommended and were overconcentrated in information technology industry groupings, industries and sub-industries. Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, respondeat superior, and violations of NASD rules. Claimants' claim involved shares of Analog Devices, Cisco, EMC, and Microsoft.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$468,875.00, plus interest, punitive

damages and costs, including reasonable attorney's fees.

Respondents requested dismissal with prejudice of Claimants' Statement of Claim, in its entirety, with prejudice, and that the Panel award Respondents attorneys' fees and costs, and other further relief as they deem just and proper including the ordering of the expungement of Respondent O'Brien's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated March 4, 2004, NASD Dispute Resolution was notified that Claimants dismissed, with prejudice their claims against Respondent Robert E. O'Brien.

Prior to the scheduled hearing, the Parties fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert E. O'Brien's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Robert E. O'Brien must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
2. Each party shall bear its own costs, including attorney's fees, except as fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety

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, Pierce, Fenner & Smith, Incorporated 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: September 30, 2003 1 session	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$1,425.00
Refund Due Claimants	= \$ 562.50

2. MLPFS is solely liable for:

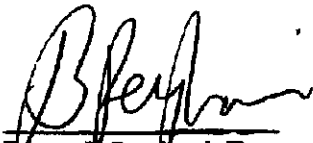
Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 562.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

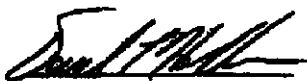
Parties' Signatures



Bryan T. Reyhani, Esq.
Loeb & Loeb
Attorney for Respondents

3/22/04

Signature Date



Daniel Hobler, Esq.
Gelb & Gelb
Attorney for Claimants

3/22/04

Signature Date


ARBITRATION PANEL

Albert G. Besser, Esq.	-	Public Arbitrator, Presiding Chairperson
Shari B. Broder, Esq.	-	Public Arbitrator
Edward G. Polansky	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Albert G. Besser, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Shari B. Broder, Esq.
Public Arbitrator

4/15/04
Signature Date

Edward G. Polansky
Non-Public Arbitrator

Signature Date

May 27, 2004
Date of Service (for NASD office use only)

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Albert G. Besser, Esq.	-	Public Arbitrator, Presiding Chairperson
Shari B. Broder, Esq.	-	Public Arbitrator
Edward G. Polansky	-	Non-Public Arbitrator

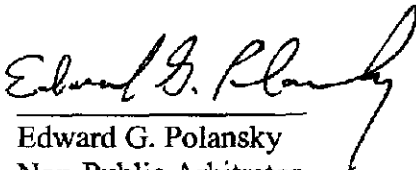
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Albert G. Besser, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Shari B. Broder, Esq.
Public Arbitrator

Signature Date



Edward G. Polansky
Non-Public Arbitrator

4/14/04

Signature Date

May 27, 2004
Date of Service (for NASD office use only)