

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jane Goldiner Frankel and Ross E. Frankel (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Frank Marinace (Respondents) v. Glenn I. Frankel (Third-Party Respondent)

Case Number: 03-00800

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member and Associated Person (Initial Claim)
Member and Associated Person v. Customer (Third-Party Claim)

REPRESENTATION OF PARTIES

Claimants Jane Goldiner Frankel ("J. Frankel") and Ross E. Frankel ("R. Frankel") hereinafter collectively referred to as "Claimants": W. Alexander Melbardis, Esq., Law Offices of W. Alexander Melbardis, East Setauket, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Frank Marinace ("Marinace") hereinafter collectively referred to as "Respondents": Victor A. Machcinski, Esq., Krebsbach & Snyder, P.C., New York, NY.

Third-Party Respondent Glenn I. Frankel ("G. Frankel") did not make an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: January 31, 2003.

Amended Statement of Claim filed on or about: January 7, 2004.

Claimants signed the Uniform Submission Agreement: January 29, 2003.

Glenn Frankel signed the Uniform Submission Agreement: July 22, 2003.

Joint Statement of Answer, Motion for More Definite Statement of Claim, and Third-Party Claim against Glenn Frankel filed by Respondents on or about: November 14, 2003.

Joint Answer to Amended Statement of Claim filed by Respondents on or about: February 23, 2004.

Respondent Merrill Lynch did not sign the Uniform Submission Agreement.

Respondent Marinace did not sign the Uniform Submission Agreement.

Third-Party Respondent G. Frankel did not file a Statement of Answer or sign a Uniform Submission Agreement as a Respondent in this matter.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; failure to supervise; omission of fact; fraud; constructive fraud; breach of fiduciary duty; and violation of industry rules. The causes of action relate to options trading.

Unless specifically admitted in their Answer, Motion for a More Definite Statement of Claim, and Third-Party Claim Against Glenn Frankel, and their Answer to the Amended Statement of Claim, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses. In their Third-Party Claim, Respondents asserted the following causes of action: indemnification and/or contribution.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$810,000.00; punitive damages in the amount of \$1,000,000.00; well-managed portfolio damages; RICO damages; attorneys' fees; and costs.

In their Answer and Answer to the Amended Statement of Claim, Respondents requested that Claimants' Statement of Claim be dismissed; alternatively, that Respondents be awarded damages for indemnification against Third-Party Respondent G. Frankel; and that costs and fees be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Glenn Frankel was required to sign a Uniform Submission Agreement as a Claimant in this matter as he was listed as an accountholder. However, on or about July 23, 2003, Glenn Frankel signed the Uniform Submission Agreement and released the Claimants in order for them to pursue this claim on their own.

During the hearing, Claimants made a Motion to Amend the pleadings to conform to the evidence. After due deliberation, the Panel granted the Motion. The Respondents made a Motion in limine to exclude medical testimony. The Panel denied their Motion. Also during the hearing the Respondents made a Motion for Summary Judgment. After due deliberation, the Panel denied the Motion as to Claimant Jane Goldiner Frankel, granted it as to Third Party Respondent Glen Frankel, and as to Claimant Ross E. Frankel the Motion for Dismissal with prejudice was granted.

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, 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. Claimants' claims are denied in their entirety.
2. Respondents' claims are denied in their entirety.
3. Third Party Respondent Glenn Frankel is liable for and shall pay to Claimants the sum of \$500.00 to reimburse Claimants for the non-refundable filing fee previously paid to NASD Dispute Resolution.
4. Third Party Respondent Glenn Frankel is liable for and shall pay to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and Respondent Frank Marinace the sum of \$2,000.00 to reimburse them for the non-refundable filing fee previously paid to NASD Dispute Resolution.
5. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 500.00
Counterclaim filing fee	= \$2,000.00

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, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
March 26, 2004	1 session
April 20, 2004	1 session

Five (5) Hearing sessions @ \$1,200.00	= \$ 6,000.00
--	---------------

Hearing Dates:	December 7, 2004	2 sessions
	December 8, 2004	2 sessions
	December 9, 2004	1 session
Total Forum Fees		= \$ 8,400.00

1. The Panel has assessed \$8,400.00 of the forum fees against Third Party Respondent Glenn Frankel.

Fee Summary

1. Claimants are jointly and severally liable for:
- | | |
|----------------------|---------------|
| Initial Filing Fee | = \$ 500.00 |
| <u>Less payments</u> | = \$ 1,700.00 |
| Refund Due Claimants | = \$ 1,200.00 |

As stated in the Award section above, Third Party Respondent Glenn I. Frankel is liable for and shall pay to Claimants \$500.00 to reimburse them for the non-refundable filing fee previously paid to NASD Dispute Resolution.

2. Respondent Merrill Lynch is solely liable for:
- | | |
|-------------------------------------|--------------|
| Member Fees | = \$8,550.00 |
| <u>Less payments</u> | = \$8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

3. Respondents Merrill Lynch and Marinace are jointly and severally liable for:
- | | |
|------------------------------|--------------|
| Third-Party Claim Filing Fee | = \$2,000.00 |
| <u>Less payments</u> | = \$3,200.00 |
| Refund Due to Respondents | = \$1,200.00 |

As stated in the Award section above, Third Party Respondent Glenn I. Frankel is liable for and shall pay to Respondents \$2,000.00 to reimburse them for the non-refundable filing fee previously paid to NASD Dispute Resolution.

4. Respondent G. Frankel is solely liable for:
- | | |
|------------------------------------|--------------|
| Forum Fees | = \$8,400.00 |
| <u>Less Payments</u> | = \$ 0.00 |
| Amount Due NASD Dispute Resolution | = \$8,400.00 |

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. 03-00800
Award Page 5 of 5

ARBITRATION PANEL

Joseph M. Perillo	-	Public Arbitrator, Presiding Chairperson
Lori Ann Romeo, Esq.	-	Public Arbitrator
Elaine D. Papas, Esq.	-	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 which is my award.



Joseph M. Perillo
Public Arbitrator, Presiding Chairperson

Signature Date

Lori Ann Romeo, Esq.
Public Arbitrator

Signature Date

Elaine D. Papas, Esq.
Non-Public Arbitrator

Signature Date

December 16, 2004
Date of Service (For NASD Dispute Resolution use only)

NASD REGULATION

NASD Dispute Resolution
Arbitration No. 03-00800
Award Page 5 of 5

ARBITRATION PANEL

Joseph M. Perillo	-	Public Arbitrator, Presiding Chairperson
Lori Ann Romeo, Esq.	-	Public Arbitrator
Elaine D. Papas, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

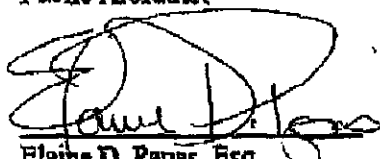
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Joseph M. Perillo
Public Arbitrator, Presiding Chairperson

Signature Date

Lori Ann Romeo, Esq.
Public Arbitrator

Signature Date



Elaine D. Papas, Esq.
Non-Public Arbitrator

Signature Date

December 16, 2004
Date of Service (For NASD Dispute Resolution use only)