

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kenneth R. Kimmins IRA (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Michael C. Fitch (Respondents)

Case Number: 03-00835

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimant Kenneth R. Kimmins IRA ("Kimmins") hereinafter referred to as "Claimant": Russell C. Weigel, III, Esq., Montello & Kenney, P.A., Miami, FL.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Michael C. Fitch ("Fitch") hereinafter collectively referred to as "Respondents": Douglas F. Stone, Esq., Krebsbach & Snyder, P.C., New York, NY and Jerauld E. Brydges, Esq., Harter, Secrest & Emery, LLP, Rochester, NY.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents on or about: May 21, 2003.

MLPFS signed the Uniform Submission Agreement: May 21, 2003.

Fitch signed the Uniform Submission Agreement: March 26, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; and failure to supervise. The causes of action relate to U.S. Treasury Strips and stock mutual funds.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$130,060.00; disgorgement of commissions and compensation received; prejudgment and postjudgment interest; costs,

including attorneys' fees, expert witness' fees, and consultant's fees; and other and further relief the Arbitration Panel deems just and proper.

Respondents requested dismissal of the Statement of Claim in its entirety; an order that this matter be expunged from Respondent Fitch's CRD record; and costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 13, 2004, Claimant withdrew his claims against Respondent Fitch. On or about January 20, 2004, Claimant notified NASD Dispute Resolution that the parties settled this matter and requested that this Stipulated Award be signed.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award (Annexed as "Exhibit A"). 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 Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondents, the Claimant, or any other person or entity.
2. Based upon Claimant's withdrawal, as part of the settlement, his allegations that Respondent Fitch engaged in wrongdoing, had committed a wrongful act as alleged in the Statement of Claim, and was liable to Claimant under any of the claims advanced in the Statement of Claim, and further based upon the parties' joint request, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael C. Fitch'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 Michael C. Fitch must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Each party shall bear their respective costs, including attorneys' fees.
4. All other requests for relief, which are not specifically addressed herein, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. 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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: November 3, 2003 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: September 25, 2003 1 session	
<u>Total Forum Fees</u>	<u>= \$1,575.00</u>

1. The Panel has assessed \$787.50 of the forum fees against Claimant.
2. The Panel has assessed \$787.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 787.50</u>
Total Fees	= \$1,087.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due to Claimant	= \$ 337.50

2. MLPFS is solely liable for:

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

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 787.50
Total Fees	= \$ 787.50
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 37.50

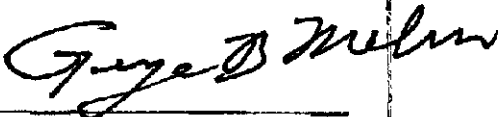
All balances are due and payable to NASD Dispute Resolution

ARBITRATION PANEL

George B. Melrose
James C. Galloway
Anthony Vitanza

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



George B. Melrose
Public Arbitrator, Presiding Chair

5/29/04

Signature Date

James C. Galloway
Public Arbitrator

Signature Date

Anthony Vitanza
Non-Public Arbitrator

Signature Date

June 8, 2004

Date of Service (For NASD office use only)

ARBITRATION PANEL

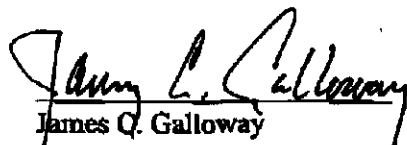
George B. Melrose
James C. Galloway
Anthony Vitanza

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

George B. Melrose
Public Arbitrator, Presiding Chair

Signature Date


James Q. Galloway
Public Arbitrator

May 27, 2004
Signature Date

Anthony Vitanza
Non-Public Arbitrator

Signature Date

June 8, 2004

Date of Service (For NASD office use only)

ARBITRATION PANEL

George B. Melrose
James C. Galloway
Anthony Vitanza

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

George B. Melrose
Public Arbitrator, Presiding Chair

Signature Date

James C. Galloway
Public Arbitrator

Signature Date


Anthony Vitanza
Non-Public Arbitrator

5-27-2004
Signature Date

June 8, 2004

Date of Service (For NASD office use only)

EXHIBIT A
STIPULATED AWARD

NASD Regulation, Inc.

In the matter of the Arbitration between

Kenneth R. Kimmins, on behalf of the
Kenneth Kimmins IRA

NASD-DR No. 03-00835

v.

Michael C. Fitch and Merrill Lynch,
Pierce, Fenner & Smith, Incorporated

REPRESENTATION OF PARTIES

Representing the Claimant, Kenneth R. Kimmins, on behalf of the Kenneth Kimmins IRA, hereinafter referred to as "Claimant," was Russell C. Weigel, III, Esq. of Montello & Kenney, P.A. in Miami, Florida.

Representing the Respondents, Michael C. Fitch and Merrill Lynch, Pierce, Fenner & Smith, Incorporated, hereinafter collectively referred to as "Respondent," was Douglas F. Stone, Esq., of Krebsbach & Snyder, P.C. in New York, New York, and Jerauld E. Brydges, Esq., of Harter, Secrest & Emery LLP in Rochester, New York.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement on or about _____.

Respondents filed the Statement of Answer on or about May 21, 2003.

Respondents signed the Uniform Submission Agreement on or about _____.

CASE SUMMARY

Claimant asserted causes of action against Respondents for unsuitability, breach of fiduciary duty, and failure to supervise.

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

RELIEF REQUESTED

Claimant requested compensatory damages, interest, attorneys' fees, expert witness fees, and consultants' fees.

Respondent requested dismissal of the Statement of Claim, expungement of the matter from Respondent Fitch's CRD record, costs, and expenses.

OTHER ISSUES CONSIDERED & DECIDED

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.

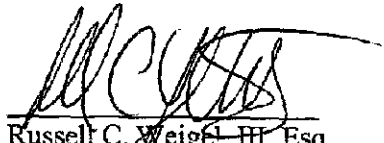
AWARD

After considering the pleadings and the submissions of the Parties, and being notified of the settlement reached between the parties, the Panel has decided in full and final resolution the issues submitted for determination as follows:

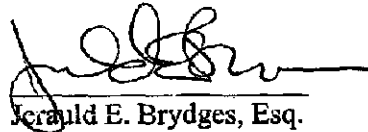
1. The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Merrill Lynch, Respondent Fitch, the Claimant, or any other person or entity.
2. Based upon Claimant's withdrawal, as part of the settlement, his allegations that the Respondent Fitch engaged in wrongdoing, had committed a wrongful act as alleged in the Statement of Claim, and was liable to Claimant under any of the claims advanced in the Statement of Claim, and further based upon the parties' joint request, the Panel recommends the expungement of all reference to the above-captioned

arbitration from the registration records of Respondent Michael C. Fitch maintained by the NASD Central Registration Depository (CRD), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Fitch must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

3. Each Party shall bear their respective costs, including attorneys' fees.
4. All other requests for relief, which are not addressed specifically in this Award, are denied with prejudice.



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