
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Abner J. Schwartz

Case Number: 03-00951

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith

Hearing Site: Tampa, FL

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Abner J. Schwartz, hereinafter referred to as "Claimant": Michael J. Stanton, Esq., James, Hoyer, Newcomer & Smiljanich P.A., Tampa, FL.

For Merrill Lynch, Pierce, Fenner & Smith ("MLPFS"), hereinafter referred to as "Respondent": Jill E. Dokson, Esq., Bressler, Amery & Ross, P.C., Miramar, FL.

CASE INFORMATION

Statement of Claim filed on or about: February 10, 2003.

Claimant signed the Uniform Submission Agreement: February 3, 2003.

Answer to Statement of Claim filed by Respondent on or about: April 10, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: February 25, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: violations of the Florida Securities and Investor Protection Act, §517.301, Fla. Stat.; negligence; gross negligence; breach of fiduciary duty; fraudulent inducement; and, breach of contract. The causes of action relate to purchases of various technology and Internet stocks, including, but not limited to, Exodus Communications, Internet Capital Group, Ariba, Inc., and AOL.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent further contended that any losses incurred by Claimant resulted from his own decision to pursue an aggressive investment strategy that sought higher returns for his investments.

RELIEF REQUESTED

Claimant requested compensatory damages of \$300,000.00, rescissory damages, interest, punitive damages of \$50,000.00, entitlement to attorneys' fees, costs, and such other relief as the undersigned arbitrators (the "Panel") deemed appropriate.

Respondent requested dismissal of the Statement of Claim and such other and further relief as

the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 15, 2004, Claimant advised NASD Dispute Resolution that he had dismissed his claims against Respondent, with prejudice.

On or about December 10, 2004, the Parties requested that the Panel enter an award dismissing this matter without any finding of fault or liability on the part of Respondent or Jerry D. Brewster and recommending expungement of all references to the above-captioned arbitration from Mr. Brewster's registration records maintained by the NASD Central Registration Depository ("CRD") ("Request for Stipulated Award").

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

AWARD

After considering the pleadings and the Request for Stipulated Award, the Panel has decided in full and final resolution of 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 Respondent or Jerry D. Brewster.
2. Based upon the Claimant's representation that after discovery, Claimant determined that Mr. Brewster had not engaged in any wrongful conduct and based upon the joint request of the parties, the Panel recommends the expungement of all references to the above-captioned arbitration from Jerry D. Brewster's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Jerry D. Brewster must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its respective costs, including attorneys' fees.
4. All other requests for relief which are not addressed specifically in this Stipulated Award are denied, with prejudice.

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 = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPFS is a member firm and 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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed 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 panel.

No injunctive relief fees were assessed in this matter.

Forum Fees and Assessments

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

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: August 11, 2003	1 session
<u>Total Forum Fees</u>	<u>= \$1,125.00</u>

The Panel has assessed \$562.50 of the forum fees to Claimant.

The Panel has assessed \$562.50 of the forum fees to Respondent.

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:

Initial Filing Fee	= \$ 300.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 562.50
Forum Fees	= \$ 562.50
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 5,762.50
Less payments	= \$ 5,762.50
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.

ARBITRATION PANEL

Mimi B. Osiason	-	Public Arbitrator, Presiding Chairperson
Alun Hywel Jones	-	Public Arbitrator
Kelsey B. McKay	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Mimi B. Osiason
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Alun Hywel Jones
Public Arbitrator

Signature Date

/s/
Kelsey B. McKay
Non-Public Arbitrator

Signature Date

December 22, 2004
Date of Service (For NASD Dispute Resolution office use only)

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NASD Dispute Resolution

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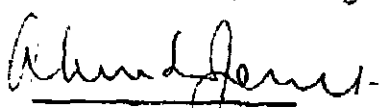
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Kelsey B. McKay	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mimi B. Osiason
Public Arbitrator, Presiding Chairperson

Signature Date



Alun Hywel Jones

12/18/04

Alun Hywel Jones
Public Arbitrator

Signature Date

Kelsey B. McKay
Non-Public Arbitrator

Signature Date_____
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Mimi B. Osiason
Public Arbitrator, Presiding Chairperson

Signature Date

Alun Hywel Jones
Public Arbitrator

Signature Date



Kelsey B. McKay
Non-Public Arbitrator

Signature Date

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