

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kurt McGill, The Kurt McGill MGMT Trust, and the Jean S. McGill Memorial Trust
(Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Rosalie H. Fields (Respondents)

Case Number: 03-00964

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Kurt McGill ("McGill"), The Kurt McGill MGMT Trust ("McGill MGMT Trust"), and the Jean S. McGill Memorial Trust ("McGill Memorial Trust") hereinafter collectively referred to as "Claimants": Samuel B. Edwards, Esq., Shepherd, Smith & Edwards, L.L.P., Houston, TX.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Rosalie H. Fields ("Fields") hereinafter collectively referred to as "Respondents": Joel S. Forman, Esq., Curtis, Mallet-Prevost, Colt & Mosle, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 7, 2003.

Claimant McGill signed the Uniform Submission Agreement: September 23, 2002.

Claimant McGill MGMT Trust signed the Uniform Submission Agreement: February 24, 2003.

Claimant McGill Memorial Trust signed the Uniform Submission Agreement: February 24, 2003.

Joint Statement of Answer filed by Respondents on or about: May 30, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: April 23, 2003.

Respondent Fields signed the Uniform Submission Agreement: May 6, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violations of federal and state securities laws and NASD rules concerning suitability, misrepresentations, and failure to supervise. The causes of action relate to the alleged recommendation of unsuitable mutual funds and stocks.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted nineteen affirmative defenses to the claims including failure to state a claim and that any alleged losses were the result of Claimants' own actions and

were market-driven.

RELIEF REQUESTED

Claimants requested compensatory damages of between \$500,000.00 and \$1,000,000.00, plus interest; punitive damages; costs; attorneys' fees; and any and all other relief available which may be granted by the Arbitration Panel.

Respondents requested dismissal of the Statement of Claim in its entirety, with prejudice, that the claims be expunged from Respondent Fields' records with the Central Registration Depository, and that Claimant be required to reimburse Respondents for defense costs and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have advised NASD Dispute Resolution and this Panel that the parties, without admitting liability, have amicably settled this matter.

A Consent Motion for dismissal with prejudice of the arbitration and expungement of all reference to this arbitration with the registered representative's record with the NASD Central Registration Depository has been filed with the Panel. This document is annexed hereto as Exhibit "A".

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered, that the parties may receive conformed copies of the Award, and that the parties will bear their respective costs and attorneys' fees.

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. This arbitration is dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Rosalie H. Fields' 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 Rosalie H. Fields must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. The parties shall each bear their respective costs and attorneys' fees.

4. 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 = \$375.00

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

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

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:

December 14-16, 2004 and January 24-27, 2005, settled by parties = \$300.00

Claimants' share = \$150.00

Respondents' share = \$150.00

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: January 22, 2004 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00
Pre-hearing conferences: September 12, 2003 1 session
December 3, 2003 1 session

Eight (8) Hearing sessions @ \$1,200.00/session = \$ 9,600.00

Hearings:	April 20, 2004	2 sessions
	April 21, 2004	2 sessions
	April 22, 2004	2 sessions
	April 23, 2004	2 sessions
Total Forum Fees		= \$12,450.00

1. The Panel has assessed \$6,225.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$6,225.00 of the forum fees jointly and severally against Respondents.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Respondents requested duplication of hearing tapes: = \$165.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Three Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$6,225.00</u>
Total Fees	= \$6,750.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$5,175.00
2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents are jointly and severally liable for:

Three Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$6,225.00
<u>Administrative Costs</u>	<u>= \$ 165.00</u>
Total Fees	= \$6,540.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$6,540.00

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All balances are due and payable to NASD Dispute Resolution

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Parties' Signatures

Kurt McGill
Kurt McGill MGMT Trust
Jean S. McGill Memorial Trust
Claimant

By: 
Samuel B. Edwards
Shepard, Smith & Edwards, L.L.P.

December 9, 2004

Signature Date

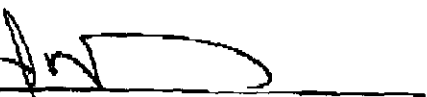
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Respondent

By: 
Joel S. Forman
Curtis, Mallet-Prevost, Colt & Mosle LLP

December 9, 2004

Signature Date

Rosalie H. Fields
Respondent

By: 
Joel S. Forman
Curtis, Mallet-Prevost, Colt & Mosle LLP

December 9, 2004

Signature Date

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ARBITRATION PANEL

Thomas M. Crawford, Esq.	-	Public Arbitrator, Presiding Chair
Donald Ferguson, Esq.	-	Public Arbitrator
Alan S. Braunshweiger	-	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 is which is my award.

Thomas M. Crawford, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald Ferguson, Esq.
Public Arbitrator

Signature Date

Alan S. Braunshweiger
Non-Public Arbitrator

Signature Date


Date of Service (For NASD office use only)

ARBITRATION PANEL

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Donald Ferguson, Esq.	-	Public Arbitrator
Alan S. Braunshweiger	-	Non-Public Arbitrator

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Thomas M. Crawford, Esq.
Public Arbitrator, Presiding Chair

1/14/05
Signature Date

Donald Ferguson, Esq.
Public Arbitrator

Signature Date

Alan S. Braunshweiger
Non-Public Arbitrator

Signature Date

January 28, 2005

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Donald Ferguson, Esq.	-	Public Arbitrator
Alan S. Braunschweiger	-	Non-Public Arbitrator

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Thomas M. Crawford, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald Ferguson
Donald Ferguson, Esq.
Public Arbitrator

December 30, 2004
Signature Date

Alan S. Braunschweiger
Non-Public Arbitrator

Signature Date

January 28, 2005

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Thomas M. Crawford, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald Ferguson, Esq.
Public Arbitrator

Signature Date

Alan S. Braunschweiler
Alan S. Braunschweiler
Non-Public Arbitrator

January 13 2005
Signature Date

January 28, 2005

Date of Service (For NASD office use only)