

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Louis V. Imundo, Louis V. Imundo IRA, Louis V. Imundo Money Purchase Plan, Louis V. Imundo Profit Sharing Plan, Marc R. Imundo, Marc R. Imundo Defined Benefit Plan, and Mark R. Imundo RRA (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 03-01044

Hearing Site: Cincinnati, Ohio

Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Claimants Louis V. Imundo ("L. Imundo"), Louis V. Imundo IRA ("L. Imundo IRA"), Louis V. Imundo Money Purchase Plan ("L. Imundo MPP"), Louis V. Imundo Profit Sharing Plan ("L. Imundo PSP"), Marc R. Imundo ("M. Imundo"), Marc R. Imundo Defined Benefit Plan ("M. Imundo DBP"), and Mark R. Imundo RRA ("M. Imundo RRA") hereinafter collectively referred to as "Claimants": Joseph J. Dehner, Esq., Frost Brown Todd, LLC, Cincinnati, OH.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Respondent": Bill P. Guest, Esq., Day, Edwards, Propester & Christensen, P.C., Oklahoma City, OK.

CASE INFORMATION

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

Claimant Louis V. Imundo signed the Uniform Submission Agreement individually, and on behalf of and as authorized person of the Louis V. Imundo IRA, Louis V. Imundo M/P Plan, and Louis V. Imundo P/S Plan: February 5, 2003.

Claimant Marc R. Imundo signed the Uniform Submission Agreement individually, and on behalf of and as authorized person of the Marc R. Imundo MD PC Defined Benefit Plan and Marc R. Imundo RRA: February 6, 2003.

Statement of Answer filed by Respondent on or about: April 29, 2003.

Respondent signed the Uniform Submission Agreement: May 2, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Ohio Securities Act; Ohio Common Law violations; Federal law violations; misrepresentation; omissions; improper investment advice; breach of fiduciary duty; and suitability. The causes of action relate to shares

of Infospace, ICGE, Ariba, AOL, CMGI, Exodus Communications, Yahoo, SDLI, and other various common stocks.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$3,825,519.64, plus costs, reimbursement of filing and hearing fees and attorneys' fees, as well as other relief that the arbitrators find just and equitable.

Respondent requested that Claimants' claim be denied, and costs and expenses.

OTHER ISSUES CONSIDERED AND 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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay Claimants compensatory damages in the amount of \$407,788.00.
2. Respondent is liable for and shall pay to Claimants sanctions in the amount of \$50,000.00.
3. Any and all relief not specifically addressed herein 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 = \$600.00

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 a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: January 19, 2004 1 session
February 16, 2004 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00

Pre-hearing conference: October 13, 2003 1 session
August 2, 2004 1 session

Eighteen (18) Hearing sessions @ \$1,200.00 = \$21,600.00

Hearing Dates: May 11, 2004 2 sessions
May 12, 2004 2 sessions
May 13, 2004 2 sessions
May 14, 2004 2 sessions
October 5, 2004 2 sessions
October 6, 2004 3 sessions
October 7, 2004 3 sessions
October 8, 2004 2 sessions

Total Forum Fees = \$24,900.00

1. The Panel has assessed \$12,450.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$12,450.00 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.

1. Claimants requested duplication of hearing tapes = \$ 225.00
2. Respondent requested duplication of hearing tapes = \$ 60.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$12,450.00
<u>Administrative Costs</u>	= \$ 225.00
Total Fees	= \$13,275.00
<u>Less payments</u>	= \$ 2,040.00
Balance Due NASD Dispute Resolution	= \$11,235.00

2. Respondent is solely liable for:
Member Fees

= \$ 8,550.00

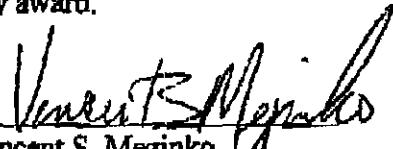
Forum Fees	= \$12,450.00
<u>Administrative Costs</u>	<u>= \$ 60.00</u>
Total Fees	= \$21,060.00
<u>Less payments</u>	<u>= \$ 8,625.00</u>
Balance Due NASD Dispute Resolution	= \$12,435.00

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

Vincent S. Mezinko	-	Public Arbitrator, Presiding Chairperson
Derek F. Collins	-	Public Arbitrator
Steven C. Bender, CPA	-	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.



Vincent S. Mezinko
Public Arbitrator, Presiding Chairperson

11/23/04

Signature Date

Derek F. Collins
Public Arbitrator

Signature Date

Steven C. Bender, CPA
Non-Public Arbitrator

Signature Date

November 30, 2004

Date of Service (For NASD Dispute Resolution use only)


Vincent S. Mezinko	-	Public Arbitrator, Presiding Chairperson
Derek F. Collins	-	Public Arbitrator
Steven C. Bender, CPA	-	Non-Public Arbitrator

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Vincent S. Mezinko
Public Arbitrator, Presiding Chairperson

Signature Date



Derek F. Collins
Public Arbitrator

11/30/04

Signature Date

Steven C. Bender, CPA
Non-Public Arbitrator

Signature Date

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Vincent S. Mezinko
Public Arbitrator, Presiding Chairperson

Signature Date

Derek F. Collins
Public Arbitrator

Signature Date

Steven C. Bender, CPA
Steven C. Bender, CPA
Non-Public Arbitrator

11-26-04
Signature Date

November 30, 2004
Date of Service (For NASD Dispute Resolution use only)