
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Eugene Weiss

Case Number: 03-01391

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith Inc.,
Lynn Mumford Wagner, and Alan Oehrig

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member Firm and Associated Person.

REPRESENTATION OF PARTIES

For Eugene Weiss ("Weiss"), hereinafter referred to as "Claimant": Scott Dimond, Esq.,
Dimond Kaplan & Rothstein, P.A., Miami, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFS"), Lynn Mumford Wagner
("Wagner"), and Alan Oehrig ("Oehrig"), hereinafter collectively referred to as "Respondents":
Brian R. Socolow, Esq. and Bryan I. Reyhani, Esq., Loeb & Loeb, L.L.P., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: February 25, 2003.

Claimant signed the Uniform Submission Agreement: February 16, 2003.

Statement of Answer filed by Respondents on or about: May 19, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: May 19, 2003.

Respondent Wagner signed the Uniform Submission Agreement: May 19, 2003.

Respondent Oehrig signed the Uniform Submission Agreement: May 19, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; negligence; fraud; respondeat superior; and negligent supervision. Specifically, Claimant alleged that Respondents recommended investments that were unsuitable, speculative and in direct contravention of Claimant's stated investment objectives. Claimant alleged he wanted only safe and conservative investments and that his principal declined in value due to Respondents' actions. The causes of action relate to the purchases and sales of Valuemark DA #152042; Valuemark DA #152041; Venture #227089; Merrill Retirement Plus #Y01175302; and Merrill Retirement Plus #Y011777088 annuities in Claimant's account.

Respondents denied all of the allegations of wrongdoing set forth in Claimant's Statement of Claim. Respondents asserted that Claimant is an experienced investor with over 30 years of investment experience. Further, Respondents asserted that the investments recommended were consistent with Claimant's stated investments objectives and that the decline in value of Claimant's portfolio was consistent with the market downturn between 2000 and 2002.

RELIEF REQUESTED

Claimant requested compensatory damages of \$180,000.00; interest; and punitive damages of \$540,000.00.

Respondents requested that the claims against them be denied in their entirety and that they be awarded the costs of this proceeding, including Respondents' attorneys' fees and other costs. Respondents Oehrig and Wagner requested that their NASD Central Registration Depository ("CRD") records maintained by NASD Dispute Resolution ("NASD") be expunged of any reference to this matter.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 5, 2004, Claimant informed NASD Dispute Resolution that he had dismissed his claims against Respondents Wagner and Oehrig with prejudice.

On or about January 12, 2004, the Parties informed NASD Dispute Resolution they had fully and finally settled all claims by and between them and submitted this Stipulated Award to the Panel for its consideration and requested that it be entered.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Wagner's and Oehrig's registration records maintained by the NASD CRD with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Wagner and Oehrig must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
2. Each party shall bear its own costs, including attorney's fees, except as fees are specifically addressed below; and
3. Any and all requests for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied in their entirety

FEES

Pursuant to the NASD Code of Arbitration (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 persons at the time of the events giving rise to the dispute. Accordingly, MLPFS is a member firm and a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Total Member Fees = \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred 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 incurred 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session = \$ 450.00

Pre-hearing conference: December 11, 2003 1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00 per session = \$1,200.00

Pre-hearing conference: August 28, 2003 1 session

Total Forum Fees = \$1,650.00

Pursuant to the agreement of the parties, the Panel assessed forum fees of \$825.00 to Claimant and forum fees of \$825.00 to Respondent MLPFS.

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 in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 825.00</u>
Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$1,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$7,000.00
<u>Forum Fees</u>	<u>= \$ 825.00</u>
Total Fees	= \$7,825.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 825.00

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

ARBITRATION PANEL

<i>Mark C. Perry, Esq.</i>		<i>Public Arbitrator, Presiding Chairperson</i>
<i>Michael E. Schmidt, CFA</i>	-	<i>Public Arbitrator</i>
<i>Leonard G. Cohen</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/ _____
Mark C. Perry, Esq.
Public Arbitrator, Presiding Chairperson

02/03/04
Signature Date

/s/
Michael E. Schmidt, CFA
Public Arbitrator

02/03/04
Signature Date

/s/
Leonard G. Cohen
Non-Public Arbitrator

02/08/04
Signature Date

02/09/04
Date of Service (For NASD Dispute Resolution office use only)

Administrative Costs

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Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPS is solely liable for:

Member Fees	= \$7,000.00
Forum Fees	= \$ 825.00
Total Fees	= \$7,825.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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

ARBITRATION PANEL

Mark C. Perry, Esq.

Michael E. Schmidt, CFA

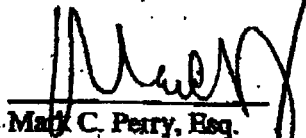
Leonard G. Cohen

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Mark C. Perry, Esq.
Public Arbitrator, Presiding Chairperson

Feb 3, 04
Signature Date

[Handwritten signature]

4-3-04
Signature Date

Signature Date.

Date of Service (For NASD Dispute Resolution office use only)

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Michael E. Schmidt, CFA
Public Arbitrator

Signature Date

Leonard G. Cohen
Leonard G. Cohen
Non-Public Arbitrator

2-8-04
Signature Date

Date of Service (For NASD Dispute Resolution office use only)