

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimant

Andrew Marer Rosenblum

and

Case Number: 03-01755
Hearing Site: Detroit, Michigan

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and John M. Nowak

NATURE OF CASE

Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Andrew Marer Rosenblum ("Claimant") was represented by Alan J. Foxman, Esq., Boca Raton, Florida.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and John M. Nowak ("Nowak"), hereinafter collectively referred to as "Respondents," were represented by Emilia DeMeo, Esq., Merrill Lynch Pierce Fenner & Smith, Inc., Office of General Counsel, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about March 11, 2003. The Submission Agreement of Claimant was signed on or about October 28, 2003.

The Statement of Answer was filed jointly by Respondents on or about May 8, 2003. The Submission Agreement of Merrill Lynch was signed on or about May 6, 2003. The Submission Agreement of Nowak was signed on or about April 28, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; suitability; negligence; misrepresentations; and failure to supervise. The causes of action related to Claimant's allegation that Respondent Nowak inappropriately invested in technology oriented and pharmaceutical sector stocks for Claimant's 401K and pension plan, including Cisco, EMC, Paychex, and Sun Microsystems.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; Respondents acted in good faith and without malice or reckless indifference toward Claimant; and Claimant failed to mitigate his alleged damages, if any.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$387,178.00
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Nowak requested that the Panel order all references to this matter be stricken from his permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Claimant submitted a notice of dismissal with prejudice against Respondent Nowak.

Based on the facts and evidence that was available to Claimant's counsel at the time the Statement of Claim was filed, Claimant and his counsel believed that the claims brought against John M. Nowak were appropriate. However, after engaging in discovery, counsel for Claimant determined that the evidence did not support the allegations made against Mr. Nowak and consequently advised Claimant that it would be in his best interest to dismiss Mr. Nowak.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims, having been withdrawn, are dismissed with prejudice;
- 2.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent John Nowak's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent John Nowak must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

- 3.) Other than Forum Fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby dismissed with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:				
<u>Filing Fees</u>				
NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:				
Initial claim filing fee			\$	300.00
<u>Member Fees</u>				
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, the member firm is Merrill Lynch				
Member surcharge			\$	1,700.00
Pre-hearing process fee			\$	750.00
Hearing process fee			\$	2,750.00
<u>Adjournment Fees</u>				
Claimant requested a postponement for the June 9-11, 2004 scheduled hearing dates. The Panel waived the \$1,125.00 postponement fee.				
<u>Forum Fees and Assessments</u>				
The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel	x	\$1,125.00	\$	1,125.00
Pre-hearing conference: October 9, 2003	1	session		
Total Forum Fees			\$	1,125.00

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

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents Merrill Lynch and Nowak

FEE SUMMARY

Claimant shall be and hereby is liable for:				
Initial Filing Fee			\$	300.00
Forum Fees			\$	562.50
Total Fees			\$	862.50
Less Payments			\$	1,425.00
Refund Due from NASD Dispute Resolution			\$	562.50
Respondent, Merrill Lynch, shall be and hereby is liable for:				
Member Fee			\$	5,200.00
Total Fees			\$	5,200.00
Less Payments			\$	5,200.00
Balance Due NASD Dispute Resolution			\$	0.00
Respondents, Merrill Lynch and Nowak, shall be and hereby are jointly and severally liable for:				
Forum Fees			\$	562.50
Total Fees			\$	562.50
Less Payments			\$	0.00
Balance Due NASD Dispute Resolution			\$	562.50

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

ARBITRATION PANEL

Michael J. Meeusen – Public Arbitrator, Presiding Chair
Jerome D. Sobczak- Public Arbitrator
Conrad W. Koski- Non-Public Arbitrator

Concurring Arbitrators:

/s/ Michael J. Meeusen
Michael J. Meeusen
Public Arbitrator, Presiding Chair

01/08/06
Signature Date

/s/ Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

12/30/05
Signature Date

/s/ Conrad W. Koski
Conrad W. Koski
Non-Public Arbitrator

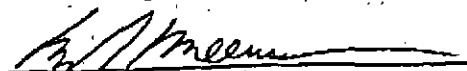
01/09/06
Signature Date

01/10/06
Date of Service (For NASD office use only)

ARBITRATION PANEL

Michael J. Meeusen – Public Arbitrator, Presiding Chair
Jerome D. Sobczak- Public Arbitrator
Conrad W. Koski- Non-Public Arbitrator

Concurring Arbitrators:



Michael J. Meeusen
Public Arbitrator, Presiding Chair

1-8-06
Signature Date

Jerome D. Sobczak
Public Arbitrator

Signature Date

Conrad W. Koski
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Jerome D. Sobczak- Public Arbitrator
Conrad W. Koski- Non-Public Arbitrator

Concurring Arbitrators:

Michael J. Meeusen
Public Arbitrator, Presiding Chair

Signature Date

Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

12-30-05
Signature Date

Conrad W. Koski
Non-Public Arbitrator

Signature Date

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Jerome D. Sobczak- Public Arbitrator
Conrad W. Koski- Non-Public Arbitrator

Concurring Arbitrators:

Michael J. Meeusen
Public Arbitrator, Presiding Chair

Signature Date

Jerome D. Sobczak
Public Arbitrator

Signature Date



Conrad W. Koski
Non-Public Arbitrator

1-9-2005

Signature Date

Date of Service (For NASD office use only)