
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

William J. Chiusano III and Carol C. Chiusano JTWROS

Case Number: 03-01984

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Incorporated

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For William J. Chiusano III and Carol C. Chiusano JTWROS, hereinafter referred to as "Claimant": Emily Peacock, Esq., James, Hoyer, Newcomer & Smiljanich, P.A., Tampa, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Incorporated, hereinafter referred to as "Respondent": Jill Dokson, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 19, 2003.

Claimant signed the Uniform Submission Agreement: March 10, 2003.

Statement of Answer filed by Respondent on or about: June 6, 2003.

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

CASE SUMMARY

Claimant asserted the following causes of action: negligence and gross negligence; breach of fiduciary duty; fraudulent inducement; and, breach of contract. The causes of action relate to the purchase in Claimant's account of shares of the common stock, 24/7 Media, Inc.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$8,203.71, costs and such other relief as deemed appropriate by the Panel.

Respondent requested that the Statement of Claim be dismissed in its entirety and that Respondent be awarded such other and further relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 14, 2004, the parties filed a joint request to adjourn the final hearing, in which they requested that the Panel make a final determination of this matter on the papers in lieu of conducting an evidentiary hearing. On or about June 22, 2004, the Panel issued an Order granting the parties' request for an adjournment and further granting the parties' request for the Panel to make a determination of this matter without an evidentiary hearing. The Panel provided the parties with an opportunity to file written submissions with evidentiary attachments for the Panel's consideration before the Panel rendered a final decision.

The parties 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 and written submissions filed by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Any and all claims for relief not specifically addressed herein are denied.

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 = \$225.00

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 is a member firm and a party.

Respondent's Member surcharge = \$1,100.00

Respondent's Pre-hearing process fee = \$ 750.00

Respondent's Hearing process fee = \$1,700.00

Respondent's Total Member Fees = \$3,550.00

Adjournment Fees

No adjournments 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.

Injunctive relief fees were not 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 @ \$600.00/session	= \$ 600.00
Pre-hearing conference: October 21, 2003 1 session	

Total Forum Fees	= \$ 600.00
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The Panel has assessed forum fees of \$300.00 to Claimant.

The Panel has assessed forum fees of \$300.00 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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 525.00
<u>Less Payments</u>	= \$ 525.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$3,850.00
<u>Less Payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 300.00

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

ARBITRATION PANEL

Patricia Gunn Zimmerman, CPA	-	Public Arbitrator, Presiding Chairperson
Joseph A. Diglio	-	Public Arbitrator
Joseph G. Lananna	-	Non-Public Arbitrator

NASD Dispute Resolution

Arbitration No. 03-01984

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Concurring Arbitrators' Signatures

/s/
Patricia Gunn Zimmerman, CPA
Public Arbitrator, Presiding Chairperson

November 22, 2004
Signature Date

/s/
Joseph A. Diglio
Public Arbitrator

November 22, 2004
Signature Date


/s/
Joseph G. Lananna
Non-Public Arbitrator

November 29, 2004
Signature Date

November 29, 2004
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures


Patricia Gunn Zimmerman, CPA
Public Arbitrator, Presiding Chairperson

11/22/04
Signature Date

Joseph A. Diglio
Public Arbitrator

Signature Date

Joseph G. Lananna
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution

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Public Arbitrator, Presiding Chairperson

Signature Date

Joseph A. Diglio

Joseph A. Diglio
Public Arbitrator

Joseph A. Diglio 11/22/04
Signature Date

Joseph G. Lananna
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

Patricia Gunn Zimmerman, CPA
Public Arbitrator, Presiding Chairperson

Signature Date

Joseph A. Diglio
Public Arbitrator

Signature Date



Joseph G. Lananna
Non-Public Arbitrator

11/28/04

Signature Date

N.A. Dispute

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