

Modified Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Eugene Nowoswiat and Marilyn Nowoswiat (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and David Russell (Respondents)

Case Number: 03-02144

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Eugene and Marilyn Nowoswiat (the "Nowoswiats") hereinafter referred to as "Claimants": Nicholas J. Guiliano, Esq., Philadelphia, PA.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and David Russell ("Russell") hereinafter collectively referred to as "Respondents": Bryan I. Reyhani, Esq. and Alyson M. Weiss, Esq., Loeb & Loeb, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 21, 2003.

Claimants signed the Uniform Submission Agreement: March 18, 2003.

Joint Statement of Answer filed by Respondents on or about: July 21, 2003

Respondent Merrill Lynch signed the Uniform Submission Agreement: April 24, 2003.

Respondent Russell signed the Uniform Submission Agreement signed: April 4, 2003.

CASE SUMMARY

Claimants alleged causes of action against Respondents that included common law fraud, breach of fiduciary duty, unsuitability, misrepresentations and omissions, and violations of the New Jersey Uniform Securities Act. Claimants' claim involved common stock.

Respondents denied all of the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses. Claimants were experienced investors whose losses were solely attributable to the severe bear market during the time period 2000 – 2002.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$442,000.00, lost income under the "well-managed portfolio" theory, unspecified punitive damages, interest, reasonable attorneys' fees, and other costs.

Respondents requested dismissal with prejudice of Claimants' Statement of Claim, in its entirety, and that the Panel award Respondents attorney's fees and costs. Respondents also requested expungement of this matter from David Russell's CRD records maintained by the NASD.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 15, 2004, Respondent Russell was dismissed with prejudice by Claimants.

Prior to the hearing, the parties fully and finally settled all claims by and between them. Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties had previously executed the Stipulated Award in this matter. The reason for this Modified Stipulated Award is to revise the Arbitrators' Signature page to include the appropriate New York attestation language.

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

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 entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David Russell's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent David Russell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. Each party shall bear its own costs, including attorney's fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$300.00

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. Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party.

Member surcharge = \$1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,750.00

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 1-3, 2004, settled by parties = WAIVED

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 Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: September 25, 2003 1 session
Total Forum Fees = \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$562.50 of the forum fees against Respondent Merrill Lynch.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00
Forum Fees = \$ 562.50
Total Fees = \$ 862.50
Less payments = \$1,425.00
Refund Due Claimant = \$ 562.50

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$5,762.50
<u>Less payments</u>	= \$5,200.00
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.

Parties' Signatures

Nicholas J. Guiliano, Esq.
Attorney for Claimants

Signature Date

Bryan I. Reyhani, Esq.
Loeb & Loeb
Attorney for Respondents

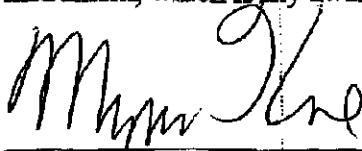
Signature Date

ARBITRATION PANEL

Myron Kove, Esq.	-	Public Arbitrator, Presiding Chairperson
Anne-Marie M. Kunzler	-	Public Arbitrator
Rick F. Suppa	-	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, which is my award.



Myron Kove, Esq.
Public Arbitrator, Presiding Chairperson

10/19/05

Signature Date

Anne-Marie M. Kunzler
Public Arbitrator

Signature Date

Rick F. Suppa
Non-Public Arbitrator

Signature Date

NOVEMBER 3, 2005

Date of Service (For NASD Dispute Resolution use only)

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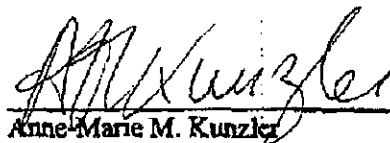
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