
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Herbert Lee Lind, IRRA v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Diane M. Alecci

Case Number: 03-02185

Hearing Site: New York, NY

REPRESENTATION OF PARTIES

Claimant Herbert Lind is represented by Thomas Mauriello of The Law Offices of Thomas D. Mauriello, 100 Pine Street, Suite 3200, San Francisco, CA 94111.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Diane M. Alecci are represented by William J. Manning, Jr. and Bryan I. Reyhani of Loeb & Loeb, 345 Park Ave, 18th Flr., New York, NY 10154.

CASE INFORMATION

Statement of Claim filed on or about: March 20, 2003

Claimant Herbert Linds' Uniform Submission Agreement signed: February 11, 2003

Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Diane Alecci on or about: May 27, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: May 28, 2003

Respondent Diane Alecci's Uniform Submission Agreement signed: May 27, 2003

CASE SUMMARY

Claimant alleges that Respondents recommended investments that were unsuitable in light of Claimant's age, financial position and risk tolerance level, including high yield junk bond funds and equity funds.

Respondents denied all the allegations of wrongdoing set forth in Claimant's Statement of Claim. Respondents claimed that Mr. Lind sought the high levels of income provided by the mutual funds in questions and made properly informed investment decisions. Respondents stated that

the investments recommended were consistent with Lind's stated investments objectives and that the decline in value of Lind's portfolio was consistent with the marketplace.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$191,716.47, plus interest at 10%, and punitive damages in the amount of \$191,716.47.

Respondents requested that the claims against them be denied in their entirety, that they be awarded the costs of this proceeding and that the costs of this action, including Respondents' attorneys' fees and other costs. Respondent Alecci also requests that her CRD records maintained by the NASD be expunged of any reference of this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, Respondent Diane Alecci was dismissed with prejudice by Claimant.

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

AWARD

Pursuant to the above, 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 reference to the above captioned arbitration from Respondent Diane Alecci'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 Alecci 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 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. Accordingly, Merrill Lynch, Pierce, Fenner and Smith is a party.

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Note: Check that all hearing information is accurate. Forum fees are derived from this information, so insure that information is accurate. Note if any pre-hearings were conducted before the full panel.

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
<u>Pre-hearing conference: October 14, 2003 1 session</u>	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees to Herbert Lee Lind, IRA.
2. The Panel has assessed \$562.50 of the forum fees of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner & Smith Incorporated and Diane M. Alecci.

Fee Summary

1. Claimant Herbert Lind is solely liable for:

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

2. Respondent Merrill Lynch, is solely liable for:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Diane M. Alecci are jointly and severally liable for:

<u>Forum Fee</u>	<u>= \$562.50</u>
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.

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Parties' Signatures

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

Signature Date

Thomas Mauriello, Esq.
Law Offices of Thomas Mauriello
Attorney for Claimant

Signature Date

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ARBITRATION PANEL

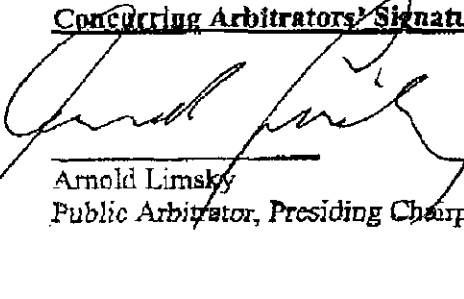
Arnold Linsky

G. Robert Abrams, Esq.

Eric P. Nachman, Esq.

- Public Arbitrator,
- Presiding Chairperson
- Industry Arbitrator
- Public Arbitrator

Concurring Arbitrators' Signatures



Arnold Linsky
Public Arbitrator, Presiding Chairperson

6/30/04
Signature Date

G. Robert Abrams, Esq.
Industry Arbitrator

Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date

JULY 27, 2004
Date of Service

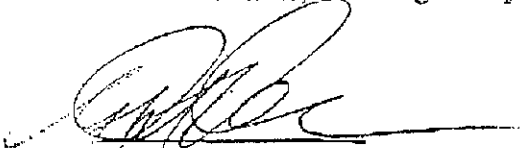
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Arnold Limsky	-	Public Arbitrator, Presiding Chairperson
G. Robert Abrams, Esq.	-	Industry Arbitrator
Eric P. Nachman, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

Arnold Limsky
Public Arbitrator, Presiding Chairperson

Signature Date



G. Robert Abrams, Esq.
Industry Arbitrator



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Eric P. Nachman, Esq.
Public Arbitrator

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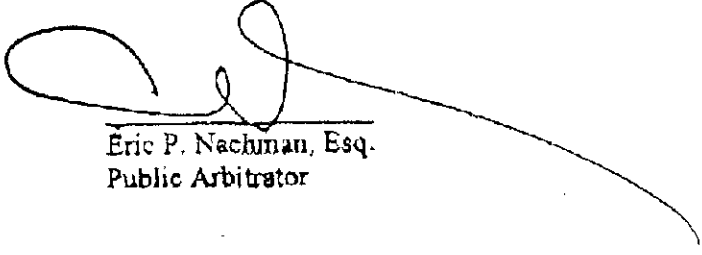
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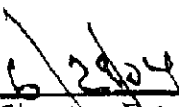
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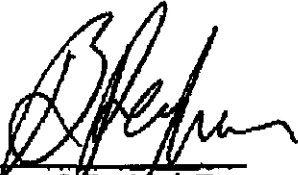


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Parties' Signatures



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

5/28/04

Signature Date



Thomas Mauriello, Esq.
Law Offices of Thomas Mauriello
Attorney for Claimant

5/27/04

Signature Date