
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-02193

Paul B. Krebs and Jane Krebs, T/C
Paul B. Krebs, Jr.
Paul Krebs IRA
Paul B. Krebs, Jr., IRRA
Paul Krebs Construction Co., Inc.
Sydney P. Johnson
Teresa A. Mollohan

Names of the Respondents

Hearing Site: Atlanta, Georgia

Merrill Lynch, Pierce, Fenner & Smith, Incorporated
Richard Thomas
The Thomas Snipes Group

Nature of the Dispute: Customer vs. Member, Associated Person and Non-Member.

REPRESENTATION OF PARTIES

For Paul B. Krebs and Jane Krebs, T/C ("Krebs T/C"), Paul B. Krebs, Jr. ("Paul Krebs"), Paul Krebs IRA ("IRA"), Paul B. Krebs, Jr., IRRA ("Krebs IRRA"), Paul Krebs Construction Co., Inc. ("Krebs Construction"), Sydney P. Johnson ("Johnson"), and Teresa A. Mollohan ("Mollohan"), hereinafter collectively referred to as "Claimants": Thomas L. Krebs, Esq., Haskell Slaughter Young & Rediker, LLC, Birmingham, Alabama.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch"): S. Lawrence Polk, Esq., Bryan Ward, Esq. and Jean-Alain Schneider, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

For Respondents Merrill Lynch, Richard Thomas ("Thomas") and The Thomas Snipes Group ("Snipes"): Cory Hohnbaum, Esq. and David N. Jonson, Esq., Kennedy Covington Lobdell & Hickman, LLP, Raleigh, North Carolina.

CASE INFORMATION

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

Claimant Paul B. Krebs, Jr., individually, on behalf of his joint and IRA accounts, and as President of Paul Krebs Construction Company signed the Uniform Submission Agreement: April 23, 2003.

Claimant Jane Krebs, on behalf of her joint account signed the Uniform Submission Agreement: April 24, 2003.

Claimant Johnson signed the Uniform Submission Agreement: April 21, 2003.

Claimant Mollohan signed the Uniform Submission Agreement: April 16, 2003.

Statement of Answer filed by Respondents Merrill Lynch, Thomas and Snipes on or about: August 16, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 20, 2004.

Respondent Thomas signed the Uniform Submission Agreement: August 23, 2004.

Respondent Snipes did not file an executed Uniform Submission Agreement.

Motion to Amend Statement of Claim containing within it an Amended Statement of Claim filed by Claimants on or about: March 3, 2005.

Respondents Merrill Lynch's and Thomas' Answer to Amended Statement of Claim filed on or about: July 11, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; failure to monitor and supervise Claimants' accounts; fraud in connection with the purchase or sale of securities in violation of Section 10(b) of the Securities Exchange Act of 1934; fraud, misrepresentations, or omissions in connection with the purchase or sale of securities in violation of Sections 10-5-14 and 10-5-12 of the Georgia Securities Act; unsuitability under securities industry rules and the Georgia Securities Act of 1973; excessive trading under the NASD Rules and the Georgia Securities Act of 1973; breach of contract; negligence; unauthorized trading under the NASD Rules and the Georgia Securities Act of 1973; and, violations of the Georgia and federal securities acts' anti-fraud provisions. The causes of action relate to Claimants' investments in options, and in shares of stock including, but not limited to: Cisco Systems; Applied Material; Internet Capital Group; CMGI, Inc.; Research in Motion; Applied Materials; Xilinx; Broadcom; Phone.com; AOL; NASDAQ-100; Applied Materials; Texas Instruments; Open Wave Systems; Dell; Home Depot; Sun Microsystems; JDS Uniphase; Motorola; Linear Technology; InfoSpace, Inc.; Network Appliance; Exodus Communications, Inc.; LSI Logic; Nokia; Atmel Corporations; and, Micro Strategy. The causes of action also relate to allegations that Respondents made unsuitable recommendations with regard to Claimants' accounts.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim, and asserted the following defenses: failure to state a claim upon which relief may be granted; all trades were suitable and authorized by Claimants; the claims are barred by applicable statutes of limitations and by ratification, waiver and estoppel; Respondents acted in good faith and exercised due care; Respondents properly supervised Claimants' accounts; no fiduciary duty existed due to the non-discretionary nature of the accounts; Claimants failed to mitigate losses in their accounts; Claimants' alleged losses were not proximately caused by Respondents; and, Respondents did not breach any contract with Claimants.

RELIEF REQUESTED

Claimants Krebs requested the amount of what a well-managed account would have been. Alternatively, Claimants Krebs requested as damages the value of their trading losses, \$5,723,221.00, and the amount of the margin interest charged, plus costs, interest, attorneys' fees, punitive damages equal to three times the amount of their trading losses, and such other relief as deemed appropriate.

Claimants Mollohan and Johnson requested the amount of what a well-managed account would have been. Alternatively, Claimants Mollohan and Johnson requested as damages the value of their trading losses (\$3,400 for Claimant Mollohan and \$6,500 for Claimant Johnson), plus costs, interest, attorneys'

fees, punitive damages equal to three times the amount of their trading losses, and such other relief as is appropriate.

Respondents requested that this action be dismissed and that Claimants have and recover nothing; an assessment of all forum fees and costs against Claimants; an award of Respondents' reasonable attorneys' fees; and, that the undersigned arbitrators (the "Panel") enter such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Snipes, a non-member of NASD, did not file with NASD Dispute Resolution a properly executed submission to arbitration but having filed a Statement of Answer and voluntarily submitted to the jurisdiction of NASD is bound by the determinations of the arbitrators on all issues submitted.

On or about April 8, 2005, the Panel granted Claimants' Motion to Amend the Statement of Claim.

Prior to the hearing, the parties agreed to mediate the case and subsequently entered into a settlement agreement with respect to the claims in this case. On or about July 28, 2005, Claimants notified NASD Dispute Resolution that the parties had settled this matter.

On or about August 29, 2005, the parties submitted a joint proposed Stipulated Award for review and execution by the Panel.

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:

Claimants have settled and dismissed their claims against Respondents Thomas and Snipes and have agreed that the expungement of all references to the above-captioned arbitration from Respondent Thomas' registration records maintained by the NASD Central Registration Depository ("CRD") is appropriate. Claimants have settled and dismissed their claims against Respondent Merrill Lynch, and request entry of this Stipulated Award.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Thomas' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Thomas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The parties shall bear their respective costs, including attorneys' fees, except as fees are specifically addressed below.

Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 600.00
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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 Merrill Lynch is a party and a member firm.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
Total Member Fees	= \$10,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

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:

The Panel has assessed a three-day cancellation fee of \$300.00 as follows:

\$150.00 to Claimants, jointly and severally.

\$150.00 to Respondents, jointly and severally.

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.

There were no injunctive relief fees assessed during these proceedings.

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 with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conferences: October 19, 2004 1 session	

Total Forum Fees = \$ 1,200.00

Pursuant to the agreement of the parties, the Panel has assessed \$600.00 of the forum fees to Claimants, jointly and severally, and \$600.00 of the forum fees to Respondents, jointly and severally.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Three-day Cancellation Fees	= \$ 150.00
Retained Hearing Session Deposit Pursuant to Rule 10332(f) of the Code	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 1,950.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	<u>= \$10,000.00</u>
Total Fees	= \$10,000.00
<u>Less payments</u>	<u>= \$10,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Three-day Cancellation Fees	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 750.00
<u>Less payments</u>	<u>= \$ 750.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

<i>William Austin Dealy, Jr.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Judith Stilz Ogden, JD</i>	-	<i>Public Arbitrator</i>
<i>William John Huston</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/S/
William Austin Dealy, Jr.
Public Arbitrator, Presiding Chairperson

September 1, 2005
Signature Date

/S/
Judith Stilz Ogden, JD
Public Arbitrator

August 30, 2005
Signature Date

/S/
William John Huston
Non-Public Arbitrator

September 1, 2005
Signature Date

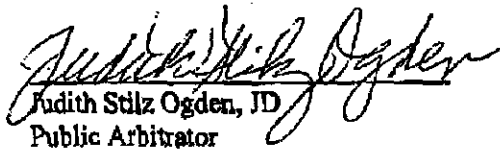
September 2, 2005
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

William Austin Dealy, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date


Judith Stolz Ogden, JD
Public Arbitrator

Aug. 30, 2005
Signature Date

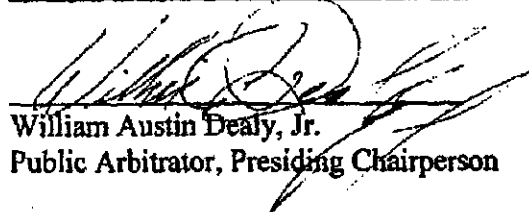
William John Huston
Non-Public Arbitrator

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William Austin Dealy, Jr.
Public Arbitrator, Presiding Chairperson

09/01/01
Signature Date

Judith Stilz Ogden, JD
Public Arbitrator

Signature Date

William John Huston
Non-Public Arbitrator

Signature Date

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William Austin Dealy, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

Judith Stilz Ogden, JD
Public Arbitrator

Signature Date



William John Huston
Non-Public Arbitrator



Signature Date

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