

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Susan N. Wellner v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Charles A. Birbara

Case Number: 03-02253

Hearing Site: Boston, MA

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Claimant Susan N. Wellner hereinafter referred to as "Claimant": James Miller and James Shah of Shepherd, Finkelman, Miller & Shah, One Lewis Street, Hartford, CT 06103-2509.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") and Charles Birbara ("Birbara"), hereinafter collectively referred to as "Respondents": William J. Manning, Jr. and Bryan I. Reyhani of Loeb & Loeb, 345 Park Ave., New York, NY 10154.

CASE INFORMATION

Statement of Claim filed on or about: March 27, 2003.

Claimant's Uniform Submission Agreement signed: March 24, 2003.

Statement of Answer filed by Respondents on or about: June 4, 2004

Respondent Merrill's Uniform Submission Agreement signed: May 5, 2003.

Respondent Birbara's Uniform Submission Agreement signed: May 30, 2003.

CASE SUMMARY

Claimant alleged causes of action against Respondents which included fraud, unsuitable investments, intentional and negligent misrepresentation, breach of fiduciary duties, breach of contract, failure to supervise, unjust enrichment, intentional and/or negligent infliction of emotional distress, negligence and violations of federal and state securities laws.

Respondents denied all of the allegations of wrongdoing set forth in Claimant's Statement of Claim. Respondents claimed that Claimant directed and controlled her own account and that the majority of the losses she sustained were the result of on-line trading, unsolicited trading and the general market downturn between the years 2000 and 2002. Respondents claimed that Claimant is an experienced and knowledgeable investor who appreciated all of the risks of the investments in her account.

RELIEF REQUESTED

Claimant requested compensatory damages in an amount in excess of \$3 million, interest, punitive damages of \$5 million, costs and attorney's fees.

Respondents requested dismissal with prejudice of Claimant's 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 Mr. Birbara's CRD record maintained by the NASD.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, Respondent Birbara 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 Charles A. Birbara'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 Birbara 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 = \$600.00

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 = \$3,350.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$5,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: January 6, 2004 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$2,400.00
Pre-hearing conferences: September 12, 2003 1 session
April 1, 2004 1 session

Total Forum Fees = \$2,850.00

1. The Panel has assessed \$1,425.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,425.00 of the forum fees jointly and severally against Merrill and Birbara.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$1,425.00</u>
Total Fees	= \$2,025.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent Merrill is solely liable for:

<u>Member Fees</u>	<u>= \$9,600.00</u>
Total Fees	= \$9,600.00
<u>Less payments</u>	<u>= \$9,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill and Birbara are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,425.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,425.00

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

Parties' Signatures



Bryan I. Reyhani
Loeb & Loeb
Attorney for Respondents

5/19/04

Signature Date



James E. Miller
Shepherd, Finkelman,
Miller & Shah
Attorney for Claimant

5/14/2004

Signature Date

ARBITRATION PANEL

Stanley Labinger
Steven Sussman
Jeanne O'Connell

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

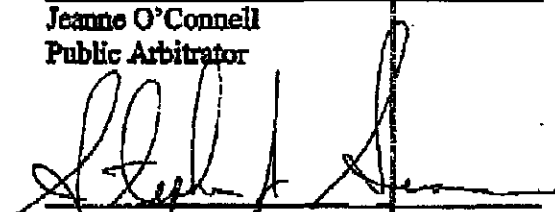
Concurring Arbitrators' Signatures

Stanley H. Labinger
Public Arbitrator, Presiding Chairperson

Signature Date

Jeanne O'Connell
Public Arbitrator

Signature Date


Steven J. Sussman, CPA
Industry Arbitrator



Signature Date

July 15, 2004

Date of Service (For NASD Dispute Resolution use only)


ARBITRATION PANEL

Stanley Labinger	-	Public Arbitrator, Presiding Chairperson
Steven Sussman	-	Industry Arbitrator
Jeanne O'Connell	-	Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date



Jeanne O'Connell
Public Arbitrator

Signature Date

Steven J. Sussman, CPA
Industry Arbitrator

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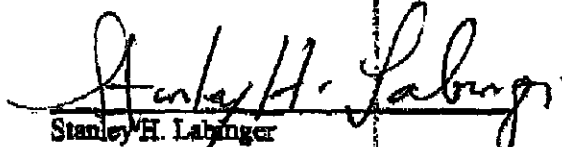
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Public Arbitrator

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Stanley H. Labinger
Public Arbitrator, Presiding Chairperson

7/12/04
Signature Date

Jeanne O'Connell
Public Arbitrator

Signature Date

Steven J. Sussman, CPA
Industry Arbitrator

Signature Date

July 15, 2004
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