

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Henry Kurowski (Claimant) v. Thomas C. Sheedy, Jerry R. Burns, Timothy L. Kane, and
Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondents)

Case Number: 03-02303

Hearing Site: Buffalo, New York

Nature of the Dispute: Customer vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimant Henry Kurowski ("Kurowski") hereinafter referred to as "Claimant": Michael
O. Morse, Esq., Buffalo, NY.

Respondents Thomas C. Sheedy ("Sheedy"), Jerry R. Burns ("Burns"), Timothy L. Kane
("Kane"), and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") hereinafter
collectively referred to as "Respondents": Alan S. Rafterman, Esq., Merrill Lynch,
Pierce, Fenner & Smith, Inc., New York, NY. Previously represented by: Harold G.
Ognelodh, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: April 7, 2003.

Joint Statement of Answer and Amended Answer filed by Respondents on or about: July
22, 2003.

Sheedy signed the Uniform Submission Agreement: September 5, 2003.

Burns signed the Uniform Submission Agreement: May 23, 2003.

Kane signed the Uniform Submission Agreement: May 23, 2003.

MLPFS signed the Uniform Submission Agreement: July 22, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; violations of Rules 2110,
2310, and 3010 of the Conduct Rules of NASD; violation of Rule 10b-5; breach of
fiduciary duty; violation of New York State General Business Law Section 349; failure to
supervise; and respondeat superior. Claimant's claim involved shares of Global
Crossing, Ltd.

Unless specifically admitted in their Amended Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$205,000.00, together with interest from January 1, 2000 through the date judgment is entered against the Respondents; the sum of \$23,798.00, together with interest from September 1, 2000 through the date judgment is entered against the Respondents; reasonable attorneys' fees in the amount of \$25,000.00; punitive damages in the amount of \$200,000.00; and forum fees and other necessary costs of bringing this proceeding.

Respondents requested dismissal of the Statement of Claim in its entirety; an assessment of all forum fees of this proceeding against the Claimant; issuance of an Order which expunge reference of this proceeding and related complaints from the CRD records of the individual Respondents; an award of the costs and reasonable attorneys' fees incurred by Respondents in connection with this arbitration; and such other and further relief as the Arbitrators deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of Claimant's case, Respondents moved to dismiss the claims against all Respondents, or in the alternative, dismiss the claims against Respondents Burns and Kane. The Panel denied these motions.

The parties have 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 the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from the registration records of Respondents Thomas C. Sheedy, Jerry R. Burns, and Timothy L. Kane maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Thomas C. Sheedy, Jerry R. Burns, and Timothy L. Kane must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

3. Any and all relief not specifically addressed herein, including attorneys' fees and punitive damages, is denied.

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 & Smith, Inc. 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 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: February 17, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: December 5, 2003 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$2,250.00

Hearing Date: March 9, 2004 2 sessions

Total Forum Fees = \$3,825.00

1. The Panel has assessed \$2,677.50 of the forum fees against Claimant.
2. The Panel has assessed \$1,147.50 of the forum fees against MLPFS.

Fee Summary

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,677.50</u>
Total Fees	= \$2,977.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,552.50
2. Respondent MLPFS is solely liable for:	
Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$1,147.50</u>
Total Fees	= \$6,347.50
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$1,147.50

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

ARBITRATION PANEL

F. Harris Nichols, Esq.	-	Public Arbitrator, Presiding Chair
Chet Robie, Ph.D	-	Public Arbitrator
Keith A. Maier, CFP	-	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.

F. Harris Nichols
F. Harris Nichols, Esq.
Public Arbitrator, Presiding Chairperson

3/15/04

Signature Date

Chet Robie, Ph.D
Public Arbitrator

Signature Date

Keith A. Maier, CFP
Non-Public Arbitrator

Signature Date

March 16, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


F. Harris Nichols, Esq.	-	Public Arbitrator, Presiding Chair
Chet Robie, Ph.D	-	Public Arbitrator
Keith A. Maier, CFP	-	Non-Public Arbitrator

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F. Harris Nichols, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Chet Robie, Ph.D
Public Arbitrator

March 15 2004

Signature Date

Keith A. Maier, CFP
Non-Public Arbitrator

Signature Date

March 16, 2004

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F. Harris Nichols, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Chet Robie, Ph.D.
Public Arbitrator

Signature Date



Keith A. Majer, CFP
Non-Public Arbitrator



Signature Date

March 16, 2004

Date of Service (For NASD Dispute Resolution use only)