
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-02346

Michael A. Murray
Michael A. Murray IRA
Michael A. Murray IRRA
Southern Minerals, Inc.
Aries Gas Company, Inc.
Eagle Gas Company, Inc.
Mad Investments, Inc.
Map Investments, Inc.
One Company, Inc.
Two Venture, Inc.
Three Venture, Inc.
Four Venture, Inc.
Five Venture, Inc.

Names of the Respondents

Hearing Site: New Orleans, Louisiana

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Robert Ewing, IV
Randy Kirby

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

REPRESENTATION OF PARTIES

For Michael A. Murray ("Murray"), Michael A. Murray IRA ("Murray IRA"), Michael A. Murray IRRA ("Murray IRRA"), Southern Minerals, Inc. ("Southern Minerals"), Aries Gas Company, Inc. ("Aries"), Eagle Gas Company, Inc. ("Eagle"), Mad Investments, Inc. ("Mad"), Map Investments, Inc. ("Map"), One Company, Inc. ("One"), Two Venture, Inc. ("Two"), Three Venture, Inc. ("Three"), Four Venture, Inc. ("Four") and Five Venture, Inc. ("Five"), hereinafter collectively referred to as "Claimants": Samuel David Abraham, Esq., Law Offices of Samuel David Abraham, Lafayette, Louisiana.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Robert Ewing, IV ("Ewing") and Randy Kirby ("Kirby"), hereinafter collectively referred to as "Respondents": George C. Freeman, III, Esq., Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed on or about: April 16, 2003.

Claimant Murray signed the Uniform Submission Agreement: April 15, 2003.

Claimants Southern Minerals, Aries, Eagle, Mad, Map, One, Two, Three, Four and Five did not file executed Uniform Submission Agreements.

Statement of Answer filed by Respondents on or about: June 23, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: May 6, 2003.

Respondent Ewing signed the Uniform Submission Agreement: October 27, 2003.

Respondent Kirby signed but did not date the Uniform Submission Agreement.

Motion to Supplement Statement of Claim and Supplement to Statement of Claim filed by Claimants on or about: March 2, 2004.

Answer to Supplemental Statement of Claim filed by Respondents on or about: May 11, 2004.

CASE SUMMARY

Claimants alleged the following causes of action: 1) churning; 2) failure to supervise; 3) fraud; 4) non-disclosure; 5) unsuitability; 6) breach of fiduciary duty; and 7) related state-law causes of action. The causes of action relate to Claimants' investments in, including but not limited to, Xilinx, AMCC, Ariba, Infospace and Internet Capital.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Supplement to Statement of Claim and asserted a number of defenses, including the following: 1) Mr. Murray's own conduct constituted a waiver or estoppel of the claims alleged in the Statement of Claim; 2) Mr. Murray, acting with full knowledge of the facts, ratified, approved, accepted, acquiesced and confirmed in all respects the acts complained of in the Statement of Claim; 3) Respondents acted properly, in good faith and in a commercially-reasonable manner with respect to Claimants' accounts; 4) Claimants failed to mitigate damages; 5) all, or portions of one or more, of Claimants' claims were barred by the applicable statutes of limitations or prescriptive periods; 6) the Statement of Claim failed to state a claim upon which relief could be granted; and 7) Claimants' claims were barred in whole or in part by the doctrine of comparative fault or the doctrine of contributory negligence.

RELIEF REQUESTED

Claimants requested: 1) (a) compensatory damages in the amount of \$8,200,000.00, plus gains made and lost from August 1999, or alternatively; 1) (b) well-managed portfolio damages in the amount of \$10,226,070.00, or alternatively; 1) (c) lost opportunity damages in the amount of \$20,000,000.00; 2) disgorgement of all asset fees, commissions and trading profits; 3) margin interest and transfer fees generated from activity in and deducted from the principal in Claimants' account from August 1999 to the present plus interest; 4) reimbursement of all accounting fees; 5) reimbursement of all legal fees; 6) costs; 7) damages for severe emotional distress; 8) reimbursement for the mortgage Claimant Murray took out on his home; 9) punitive damages in an amount to be judged by the undersigned arbitrators (the "Panel"); 10) disgorgement of all investment banking fees, proprietary product fees, bonuses, compensation, commissions and expenses obtained by Respondents in connection with the companies whose securities were purchased by Respondents in Claimants' accounts; and 11) that Claimants be awarded rescission and/or such other measure of damages

deemed appropriate by the Panel.

Respondents requested: 1) that the Supplement to Statement of Claim be denied in all respects; 2) that all forum fees and costs be assessed against the Claimants; 3) expungement of the NASD Central Registration Depository ("CRD") records of Respondents Ewing and Kirby; and 4) that Respondents be awarded such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants Southern Minerals, Aries, Eagle, Mad, Map, One, Two, Three, Four and Five did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but having voluntarily submitted to the jurisdiction of NASD as memorialized in a letter from Claimants' counsel to NASD Dispute Resolution dated November 7, 2005, participated in the proceedings, and as parties to the settlement agreement, are bound by the determination of the Panel on all issues submitted.

On or about April 23, 2004, the Panel granted Claimants' Motion to Supplement the Statement of Claim.

On July 13, 2005, the parties appeared before the Panel and informed the Panel that they had agreed to settle the case. The parties also informed the Panel that, prior to the settlement of the case, Claimants had voluntarily dismissed with prejudice all claims against Respondents Ewing and Kirby. Respondents made an oral motion for expungement relating to Respondents Ewing and Kirby. Claimants did not oppose the motion. On or about July 14, 2005, the Panel entered an order recommending the expungement of Respondents Ewing's and Kirby's NASD CRD records.

On or about September 30, 2005, the parties submitted a proposed Stipulated Award, wherein the parties requested expungement of the NASD CRD records of Respondents Ewing and Kirby. On or about October 5, 2005, Claimants requested a delay in the submission of the proposed Stipulated Award to the Panel. On or about November 7, 2005, Claimants notified NASD that the proposed Stipulated Award was ready for submission to the Panel.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and Respondents' unopposed motion for expungement of the NASD CRD records of Respondents Ewing and Kirby, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants Murray, Murray IRA, Murray IRRA, Southern Minerals, Aries, Eagle, Mad, Map, One, Two, Three, Four and Five against MLPFS in this action, be and hereby are dismissed, with prejudice.
2. The Panel recommends the expungement of all references to the above-captioned arbitration proceeding from Respondents Ewing's and Kirby's registration records maintained by the NASD CRD, with the

understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Ewing and Kirby must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. All other requests for relief, not addressed specifically in this Stipulated Award, including Claimants' requests for punitive damages and attorneys' fees, are denied, with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent MLPFS is a member firm and a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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 following three-day cancellation fee was assessed in this matter:

Hearings scheduled for July 13 - 29, 2005	= \$ 300.00
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The Panel has assessed \$150.00 of the three-day cancellation fee to Claimants, jointly and severally.

The Panel has assessed \$150.00 of the three-day cancellation fee to Respondent MLPFS.

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 2,700.00

Pre-hearing conferences:	December 17, 2003	1 session
	January 8, 2004	1 session
	January 16, 2004	1 session
	July 8, 2004	1 session
	July 9, 2004	1 session
	July 15, 2004	1 session

Five (5) Pre-hearing sessions with the Panel @ \$1,200.00/ session = \$ 6,000.00

Pre-hearing conferences:	October 13, 2003	1 session
	August 11, 2004	1 session
	August 20, 2004	1 session
	August 27, 2004	1 session
	June 20, 2005	1 session

Two (2) Hearing sessions with the Panel @ \$1,200.00/session = \$ 2,400.00

Hearing Dates:	July 13, 2005	2 sessions
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Total Forum Fees = \$11,100.00

The Panel has assessed \$5,550.00 of the forum fees to Claimants, jointly and severally.

The Panel has assessed \$5,550.00 of the forum fees to Respondent MLPFS.

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:

Forum Fees	= \$ 5, 550.00
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Three-Day Cancellation Fee	= \$ 150.00
<u>Initial Filing Fee</u>	= \$ 600.00
Total Fees	= \$ 6,300.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

Respondent MLPFS is solely liable for:

Forum Fees	= \$ 5,550.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Member Fees</u>	= \$10,000.00
Total Fees	= \$15,700.00
<u>Less payments</u>	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 5,700.00

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

ARBITRATION PANEL

<i>Kenneth A. Goodwin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Michael B. McReynolds</i>	-	<i>Public Arbitrator</i>
<i>Michael T. Nobile</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

_____/s/
Kenneth A. Goodwin, Esq.
Public Arbitrator, Presiding Chairperson

11/21/05
Signature Date

Michael B. McReynolds
Public Arbitrator

Signature Date

_____/s/
Michael T. Nobile
Non-Public Arbitrator

11/21/05
Signature Date

11/22/05
Date of Service (For NASD Dispute Resolution office use only)

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

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Three-Day Cancellation Fee	= \$ 150.00
Initial Filing Fee	= \$ 600.00
Total Fees	= \$ 6,300.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

Respondent MLPFS is solely liable for:

Forum Fees	= \$ 5,550.00
Three-Day Cancellation Fee	= \$ 150.00
Member Fees	= \$10,000.00
Total Fees	= \$15,700.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 5,700.00

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

ARBITRATION PANEL

Kenneth A. Goodwin, Esq.
Michael B. McReynolds
Michael T. Nobile

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator


Concurring Arbitrators' Signatures

Kenneth A. Goodwin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Michael B. McReynolds
Public Arbitrator

Signature Date



Michael T. Nobile
Non-Public Arbitrator



Signature Date

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