

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Patrick M. Germano

Case Number: 03-02431

Name of the Respondent
Merrill, Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Pittsburgh, PA

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant, Patrick M. Germano ("Germano"), hereinafter referred to as "Claimant", was represented by Robert B. Sommer, Esq., Hergenroeder, Rega & Sommer, LLC, Pittsburgh, Pennsylvania.

Respondent, Merrill, Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), hereinafter referred to as "Respondent", was represented by G. Jeffrey Boujoukos, Esq., Morgan Lewis & Brockius, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed March 28, 2003.

Claimant signed the Uniform Submission Agreement on March 26, 2003.

Statement of Answer filed by Respondent on July 8, 2003.

A representative of Respondent signed the Uniform Submission Agreement on May 21, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract, breach of duty of care, negligence, failure to supervise, misrepresentations and non-disclosures, and suitability. The causes of action relate to the purchase and sale of common stock, mutual funds, and options, and include trades in the Sandisk, Inc., Lucent Technologies, and Sun Microsystems stock.

Unless specifically admitted in its Answer, Respondent 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; Claimant failed to use due diligence in the operation of his accounts; failure to mitigate damages; any losses are attributable to market conditions; Claimant expressly ordered, approved, accepted, authorized, participated in and ratified all transactions; Respondent acted in good faith; Respondent is not a fiduciary of Claimant; there is no private cause of action for the alleged violation of self-regulatory organization rules; Claimant's claims are barred by applicable statutes of limitations; and Claimant's claims are barred by the doctrine of laches.

RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$ 358,906.00
Interest	amount unspecified

Respondent in its Statement of Answer requested that the Statement of Claim be dismissed in its entirety, that forum fees, and other costs be assessed to Claimant, that Claimant be assessed reasonable attorneys' fees, and any such other and further relief which the Arbitration Panel (the "Panel") deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing, Claimant withdrew each and every allegation and/or implication that the Respondent or any of its agents took actions out of a motivation to create or increase commissions.

At the close of Claimant's case-in-chief, Respondent made an oral motion for a directed verdict, which was denied by the Panel.

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, 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 denied in their entirety;
2. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein 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
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

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:

One (1) Pre-hearing session with a single arbitrator @ \$ 450 = \$ 450.00
Pre-hearing conference: March 26, 2004 1 session

One (1) Pre-hearing session with Panel @ \$ 1,125 = \$ 1,125.00
Pre-hearing conference: December 3, 2003 1 session

Eight (8) Hearing sessions @ \$ 1,125 = \$ 9,000.00
Hearing Dates: May 4, 2004 2 sessions
May 5, 2004 2 sessions
May 6, 2004 2 sessions
May 7, 2004 2 sessions

Total Forum Fees = \$ 10,575.00

1. The Panel has assessed \$ 2,643.75 of the forum fees to Claimant..
2. The Panel has assessed \$ 7,931.25 of the forum fees to Respondent.

EEE SUMMARY

1. Claimant, Germano, is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 2,643.75
Total Fees	= \$ 2,943.75
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,518.75

2. Respondent, Merrill Lynch, is assessed and shall pay the following fees:


Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 7,931.25
Total Fees	= \$ 13,131.25
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 7,931.25

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

ARBITRATION PANEL

Beth Rackley Hesselson	-	Public Arbitrator, Presiding Chairperson
David J. Anderson	-	Public Arbitrator, Panelist
Bert Cliff	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Beth Rackley Hesselton
Public Arbitrator, Presiding Chairperson

5-2-04

Signature Date

David J. Anderson
Public Arbitrator, Panelist

Signature Date

Bert Cliff
Non-Public Arbitrator, Panelist

Signature Date

May 20, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Beth Rackley Hesselton
Public Arbitrator, Presiding Chairperson

Signature Date

David J. Anderson
David J. Anderson
Public Arbitrator, Panelist

May 19, 2004
Signature Date

Bert Cliff
Non-Public Arbitrator, Panelist

Signature Date

May 20, 2004
Date of Service (For NASD Dispute Resolution office use only)

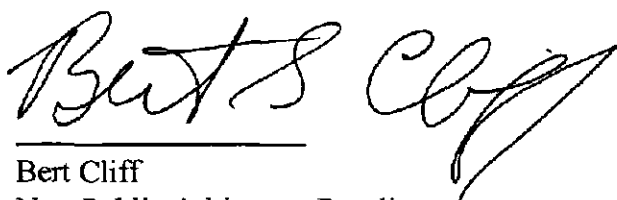
Concurring Arbitrators' Signatures

Beth Rackley Hesselson
Public Arbitrator, Presiding Chairperson

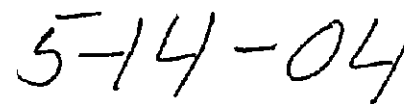
Signature Date

David J. Anderson
Public Arbitrator, Panelist

Signature Date



Bert Cliff
Non-Public Arbitrator, Panelist



Signature Date

May 20, 2004
Date of Service (For NASD Dispute Resolution office use only)