
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Earl Concors
Elaine Concors

Case Number: 03-02513

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Earl Concors ("EAC") and Elaine Concors ("ELC"), hereinafter collectively referred to as "Claimants":
Scott J. Link, Esq., Ackerman Link Sartory, West Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Neil S. Baritz, Esq.,
Baritz & Colman, LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 4, 2003.

Claimants signed the Uniform Submission Agreements: March 21, 2003.

Statement of Answer filed by Respondent on or about: June 27, 2003.

Respondent signed the Uniform Submission Agreement: May 15, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; negligence; unsuitability; violation of Chapter 517.301 of the Florida Statutes; and negligent supervision. The causes of action relate to the purchase in Claimants' accounts of unspecified Mid-Cap and Large-Cap stocks, as well as other common stocks including, but not limited to, Ariba; Internet Holders; Infospace; PSInet; VerticalNet; and Broadcom.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of approximately \$300,000.00, plus interest, costs, attorneys' fees pursuant to Section 517.211, Fla. Stat., and such other relief as deemed appropriate and fair by the Panel.

Respondent requested the following: a dismissal of this action in its entirety; a determination that Respondent is the prevailing party with respect to Claimants' allegations under Section 517.301 of the Florida Statutes; the assessment of all costs and forum and/or processing fees incurred by Respondent in connection with its defense of this matter against Claimants; and, such other and further relief as deemed just and proper by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

As to Claimant ELC, Respondent is liable on the claims for violation of Chapter 517 and unsuitability, but is not liable on the claims for breach of contract, breach of fiduciary duty, negligence or negligent supervision. Respondent shall pay compensatory damages to Claimant ELC in the amount of \$69,693.02, plus interest at the Florida statutory rate from April 30, 2003 to January 10, 2005. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the NASD Code of Arbitration Procedure (the "Code").

As to Claimant EAC, the Panel finds no liability on the part of Respondent.

Respondent is liable and shall reimburse Claimant ELC the amount of \$6,892.50, representing costs incurred by Claimant ELC in connection with this matter.

The Panel awards attorneys' fees to Claimant ELC, the amount of which shall be determined by a court of competent jurisdiction. The Panel denies Claimant EAC's request for attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant EAC's claims for relief pursuant to Section 517.301 of the Florida Statutes, are 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 15, 16 and 17, 2004; adjournment by Respondent = \$1,500.00

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.

No three-day cancellation fees were assessed in this matter.

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.

Injunctive relief fees were not assessed in this matter.

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 @ \$1,125.00/session | = \$1,125.00 |
| Pre-hearing conference: October 21, 2003 1 session | |
| One (1) Pre-hearing session with a single arbitrator @ \$450.00/session | = \$ 450.00 |
| Pre-hearing conference: December 15, 2003 1 session | |
| Six (6) Hearing sessions @ \$1,125.00/session | = \$6,750.00 |
| Hearing Dates: January 10, 2005 2 sessions | |
| January 11, 2005 2 sessions | |
| January 12, 2005 2 sessions | |
| <hr/> Total Forum Fees | <hr/> = \$8,325.00 |

The Panel has assessed the total forum fees of \$8,325.00 to Respondent.

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 are 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 in this matter.

Fee Summary

Claimants are jointly and severally liable for:

| | |
|-------------------------------------|-------------|
| Initial Filing Fee | = \$ 300.00 |
| Total Fees | = \$ 300.00 |
| Less Payments | = \$ 300.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent is solely liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 5,200.00 |
| Adjournment Fee | = \$ 1,500.00 |
| Forum Fees | = \$ 8,325.00 |
| Total Fees | = \$15,025.00 |
| Less Payments | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 9,825.00 |

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

ARBITRATION PANEL

| | | |
|------------------------|---|--|
| Hon. Horace A. Andrews | - | Public Arbitrator, Presiding Chairperson |
| Frank Brenner, Esq. | - | Public Arbitrator |
| David L. Walby | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

_____/s/_____
Hon. Horace A. Andrews
Public Arbitrator, Presiding Chairperson

January 17, 2005
Signature Date

_____/s/_____
Frank Brenner, Esq.
Public Arbitrator

January 14, 2005
Signature Date

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/s/

David L. Walby
Non-Public Arbitrator

January 14, 2005
Signature Date

January 19, 2005
Date of Service (For NASD Dispute Resolution office use only)

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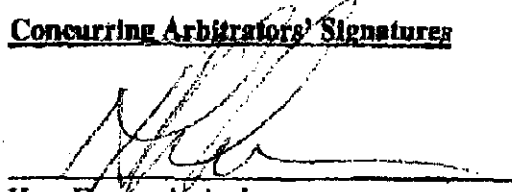
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| David L. Walby | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures


Hon. Horace A. Andrews
Public Arbitrator, Presiding Chairperson

1/17/05
Signature Date

Frank Brenner, Esq.
Public Arbitrator

Signature Date

NASD Dispute Resolution
Arbitration No. 03-02513
Award Page 4

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Concurring Arbitrators' Signatures

Hon. Horace A. Andrews
Public Arbitrator, Presiding Chairperson

Signature Date



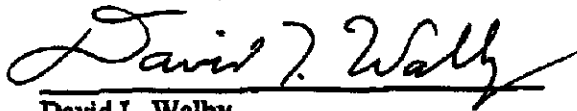
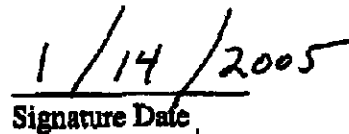
Frank Brenner, Esq.
Public Arbitrator

1-14-05

Signature Date

NASD Dispute Resolution

Arbitration No. 03-02513

Award Page 5David L. Walby
Non-Public Arbitrator

Signature Date

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