

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Joel and Nancy Walker, Joel Walker IRA, and Nancy Walker IRA (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Thomas Byron Boots (Respondents)

Case Number: 03-02539

Hearing Site: Columbus, Ohio

Nature of the Dispute: Customers v. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants Joel and Nancy Walker ("Walkers"), Joel Walker IRA ("J. Walker IRA"), and Nancy Walker IRA ("N. Walker IRA") hereinafter collectively referred to as "Claimants": Neil F. Freund, Esq. and Vaseem S. Hadi, Esq., Freund, Freeze & Arnold, Dayton, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Thomas Byron Boots ("Boots") hereinafter collectively referred to as "Respondents": Russell S. Sayre, Esq., Taft, Stettinius & Hollister, LLP, Cincinnati, OH.

CASE INFORMATION

Statement of Claim filed on or about: April 7, 2003.

Claimants signed the Uniform Submission Agreement: April 21, 2003.

Joint Statement of Answer filed by Respondents on or about: June 24, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 13, 2003.

Respondent Boots signed the Uniform Submission Agreement: July 8, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; breach of contract; and fraud. Claimants' claims involved unspecified securities.

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

RELIEF REQUESTED

Claimants requested compensatory damages exceeding the amount of \$400,000.00 and attorneys' fees.

Respondents requested dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents made a motion to dismiss at the conclusion of Claimants' case. After due consideration, the Panel decided to deny the motion.

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. Respondents are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$197,500.00.
2. Any and all relief not specifically addressed herein, including 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
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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, 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 Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: October 15, 2003 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$6,750.00
Hearing Dates: August 17, 2004 2 sessions
August 18, 2004 2 sessions
August 19, 2004 2 sessions

Total Forum Fees = \$7,875.00

1. The Panel has assessed \$3,937.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,937.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$3,937.50
<u>Total Fees</u>	= \$4,237.50
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,812.50
2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,937.50
<u>Total Fees</u>	= \$3,937.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

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

ARBITRATION PANEL

Charles W. Kohler, Esq.	-	Public Arbitrator, Presiding Chairperson
John R. Garvin	-	Public Arbitrator
Stephen Anthony Rogers	-	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 is which is my award.



Charles W. Kohler, Esq.
Public Arbitrator, Presiding Chairperson

9/3/04
Signature Date

John R. Garvin
Public Arbitrator

Signature Date

Stephen Anthony Rogers
Non-Public Arbitrator

Signature Date

September 15.,, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

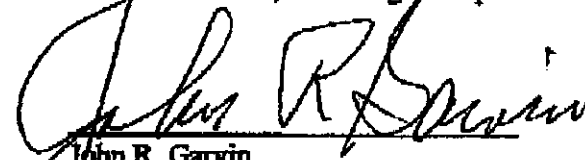
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Concurring Arbitrators' Signatures

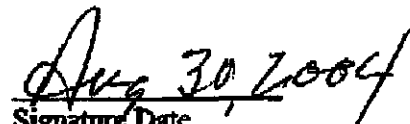
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Charles W. Kohler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



John R. Garvin
Public Arbitrator



Signature Date

Stephen Anthony Rogers
Non-Public Arbitrator

Signature Date

September 15, 2004
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Charles W. Kohler, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

John R. Garvin
Public Arbitrator

Signature Date



Stephen Anthony Rogers
Non-Public Arbitrator

09-01-2004

Signature Date

September 15, 2004
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