

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Barbara Muney, Barbara Muney TTEE of the Samuel T. Borenstein MRL Trust, Lester Borenstein TTEE of the Samuel T. Borenstein MRL Trust, and Martin Borenstein TTEE of the Samuel T. Borenstein MRL Trust (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Thomas Edward McCarrick (Respondents)

Case Number: 03-02546

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Barbara Muney, Barbara Muney TTEE of the Samuel T. Borenstein MRL Trust, Lester Borenstein TTEE of the Samuel T. Borenstein MRL Trust, and Martin Borenstein TTEE of the Samuel T. Borenstein MRL Trust hereinafter collectively referred to as "Claimants": Robert Bertsch, Esq., Bertsch & Associates, P.C., Port Washington, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Thomas Edward McCarrick ("McCarrick") hereinafter collectively referred to as "Respondents": Theodore R. Snyder, Esq., Krebsbach & Snyder, P.C., New York, NY.

CASE INFORMATION

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

First Amended Statement of Claim filed on or about: May 9, 2003.

Claimants signed the Uniform Submission Agreement: April 24, 2003.

Joint Statement of Answer filed by Respondents on or about: July 28, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 6, 2003.

Respondent McCarrick signed the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability, misrepresentations, negligence, violations of Section 10(b)(5) of the Securities Act and violations of Sections 15 and 20 of the Securities Exchange Act, and negligence. Claimants' claims involved common stock.

Respondents denied all allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of at least \$350,000.00, which includes margin interest; interest; costs and disbursements, including attorneys' fees; and such other and further relief as may be deemed just and proper.

Respondents requested that Claimants' claim be denied in all respects, that any reference to this matter be expunged from Respondent McCarrick's registration records, that the forum fees and costs of this proceeding be assessed against Claimants, and such other and further relief that the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant has dismissed with prejudice all claims against Respondent Thomas Edward McCarrick.

On or about August 12, 2004, Claimants and Respondents notified NASD Dispute Resolution that the parties settled this matter and requested entry of this Stipulated Award.

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

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed in their entirety.
2. Respondent Thomas Edward McCarrick is retroactively stricken from the pleadings and records maintained by the NASD in this matter.
3. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Thomas Edward McCarrick's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Thomas Edward McCarrick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all relief not specifically addressed herein 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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Incorporated is 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

The following adjournment fees are assessed:

July 20-22, 2004, adjournment requested by both parties = \$1,125.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
<u>Pre-hearing conference: October 31, 2003 1 session</u>	<u></u>
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$1,125.00 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>Adjournment Fee</u>	<u>= \$ 325.00</u>
Total Fees	= \$ 625.00
<u>Less payments</u>	<u>= \$1,425.00</u>

Refund Due Claimant = \$ 800.00

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:

Forum Fees	= \$1,125.00
<u>Adjournment Fees</u>	= \$ 800.00
<u>Total Fees</u>	= \$1,925.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,925.00

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

NASD Dispute Resolution
Arbitration No. 03-02546
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Signatures on Behalf of Parties

BERTSCH & ASSOCIATES, P.C.


By: Richard Singer

5/13/04
Signature Date

Attorneys for Barbara Muney, the Samuel
T. Borenstein Trust, Barbara Muney, Lester Borenstein
and Martin Borenstein, as trustees of the Samuel T. Borenstein MRL Trust

KREBSBACH & SNYDER, P.C.


By: Theodore Snyder

5/13/04
Signature Date

Attorneys for Merrill Lynch, Pierce,
Fenner & Smith, Inc. and Thomas Edward McCarrick

ARBITRATION PANEL

Edward M. Rosensteel, Esq.	-	Public Arbitrator, Presiding Chairperson
James M. Coakley, Ed.D	-	Public Arbitrator
Joseph R. Brancalone	-	Industry Arbitrator

Concurring Arbitrators' Signatures



Edward M. Rosensteel, Esq.
Public Arbitrator, Presiding Chairperson

Oct. 10, 2004
Signature Date

James M. Coakley
Public Arbitrator

Signature Date

Joseph R. Brancalone
Industry Arbitrator

Signature Date

October 19, 2004
Date of Service (For NASD office use only)

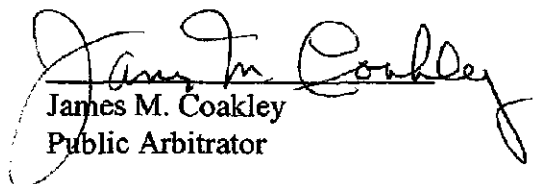
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Joseph R. Brancalone	-	Industry Arbitrator

Concurring Arbitrators' Signatures

Edward M. Rosensteel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



James M. Coakley
Public Arbitrator

10/4/04
Signature Date

Joseph R. Brancalone
Industry Arbitrator

Signature Date

October 19, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

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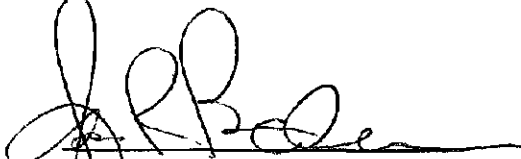
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James M. Coakley
Public Arbitrator

Signature Date



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Signature Date

October 19, 2004
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