

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 03-02877

Zion and Cookie Avissar
Zion Avissar IRA
Cookie Avissar IRA
Aimee Avissar
Aimee Avissar IRA
Cookie Avissar CF Bailey Avissar
Cookia Avissar CF Garon Minton
Danny Rabby

Name of the Respondent

Hearing Site: Washington, DC

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Michaela P. Huelbig
W. Keith Mayo

Nature of the Dispute: Customers vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants, Zion and Cookie Avissar, Zion Avissar IRA, Cookie Avissar IRA, Aimee Avissar individually and as custodian for Bailey Avissar and Garon Minton, and Danny Rabby, hereinafter collectively referred to as "Claimants", were represented by Arthur M. Schwartzstein, Esq., McLean, Virginia.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Michaela P. Huelbig ("Huelbig"), and W. Keith Mayo ("Mayo"), hereinafter collectively referred to as "Respondents" were represented by William E. Mahoney, Jr., Esq., Stradley, Ronon, Stevens & Young LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on April 18, 2003.

Claimants Zion and Cookie Avissar signed the Uniform Submission Agreement on May 28, 2003.

Aimee Avissar signed the Uniform Submission Agreement on May 28, 2003.

Cookie Avissar signed the Uniform Submission Agreement as custodian for Bailey Avissar and Garon Minton on May 28, 2003.

Zion Avissar executed the Uniform Submission Agreement as attorney-in-fact for Danny Rabby on May 28, 2003.

Joint Statement of Answer filed by Respondents on September 5, 2003.

Respondents did not submit executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted the following causes of action, among others: suitability, breach of contract, negligence, omission of facts, breach of fiduciary duty, failure to supervise, and misrepresentation. The causes of action relate to the purchase of various unspecified technology stocks for Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants' Statement of Claim fails to state a claim upon which relief can be granted; estoppel; failure to mitigate damages; Claimants authorized, ratified, approved, accepted, acquiesced in, and confirmed the acts complained of in the Statement of Claim; and failure to exercise due diligence.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$1,511,233.77
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety and that the costs of this proceeding, including attorneys' fees, be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents, Merrill Lynch, Huelbig and Mayo, did not file with NASD Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

At the hearing, Claimants amended their Statement of Claim to include a claim for unspecified punitive damages.

At the conclusion of Claimants' case in chief, Respondents moved for summary judgment. The Panel denied 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, 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. Respondent Merrill Lynch is liable to and shall pay to Claimants compensatory damages in the amount of \$399,145.00. This amount is to be divided *pro rata* based upon the balance in each account at issue;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from the registration records of Respondents Huelbig and Mayo maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Huelbig and Mayo must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All claims for punitive damages are denied in their entirety;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
5. 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	= \$ 500.00
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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	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

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 Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: March 17, 2004 1 session	

Eight (8) Hearing sessions @ \$1,200.00 = \$ 9,600.00

Hearing Dates:	October 11, 2004	2 sessions
	October 12, 2004	2 sessions
	October 13, 2004	2 sessions
	October 14, 2004	2 sessions

Total Forum Fees = \$10,800.00

1. The Panel has assessed \$2,700.00 of the forum fees to Claimants.
2. The Panel has assessed \$8,100.00 of the forum fees to Respondent Merrill Lynch.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 2,700.00
Total Fees	= \$ 3,200.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

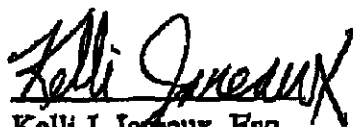
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 8,100.00
Total Fees	= \$16,650.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 8,100.00

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

ARBITRATION PANEL

Kelli J. Jareaux, Esq.	-	Public Arbitrator, Presiding Chairperson
Florine M. Williams	-	Public Arbitrator, Panelist
Carole Rollinson	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Kelli J. Jaceaux, Esq.
Public Arbitrator, Presiding Chairperson

10/29/04

Signature Date

Florine M. Williams
Public Arbitrator, Panelist

Signature Date

Carole Rollinson
Non-Public Arbitrator, Panelist

Signature Date

11/2/04
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
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Award Page 5

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Florine M. Williams
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NASD DISPUTE RESOLUTION

002/002

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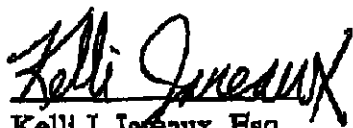
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Carole Rollinson	- Non-Public Arbitrator, Panelist

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