
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Steven B. Cox
David P. Cox
Thomas E. Cox

Case Number: 03-02959

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Patrick James Dwyer
William Kenneth Bruce II

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Steven B. Cox, David P. Cox and Thomas E. Cox, hereinafter collectively referred to as "Claimants": John R. Kiefner, Esq., Kiefner & Hunt, P.A., St. Petersburg, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Patrick James Dwyer ("Dwyer") and William Kenneth Bruce II ("Bruce"), hereinafter collectively referred to as "Respondents": Domenick Evangelista, Esq. and Seth V. Alhadeff, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 15, 2003.

Claimant Steven B. Cox signed the Uniform Submission Agreement: March 28, 2003.

Claimant David P. Cox signed the Uniform Submission Agreement: March 24, 2003.

Claimant Thomas E. Cox signed the Uniform Submission Agreement: January 24, 2003.

Statement of Answer filed by Respondents on or about: June 30, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 9, 2003.

Respondent Dwyer signed the Uniform Submission Agreement: September 11, 2003.

Respondent Bruce signed the Uniform Submission Agreement: August 5, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: 1) violation of Florida Statutes, Section 517.301; 2) negligence; 3) gross negligence; 4) violation of NASD Conduct Rules; 5) breach of fiduciary duty; 6) negligent supervision; 7) breach of contract; and, 8) common law fraud.. The causes of action relate to the purchase and sale of various, unspecified securities in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondents asserted that any losses incurred by Claimants resulted from their own decisions. In addition, they stated that Claimants were fully appraised of, understood and knowingly accepted the risks involved in the investments, failed to mitigate damages and ratified all purchases and sales in their accounts.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$1,500,000.00, punitive damages in an unspecified amount, statutory interest, attorneys' fees, costs and such other relief as this Panel deemed appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety, with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 4, 2005, the parties notified NASD Dispute Resolution that they had settled this matter and submitted a Joint Submission of Stipulated Award, with a request for expungement of the NASD Central Registration Depository (the "CRD") records of Respondents Dwyer and Bruce. The parties stipulated that Claimants elected to voluntarily dismiss all claims, including, but not limited to, all claims for attorney's fees, costs and expenses against Respondents, with prejudice. In consideration of Claimants' agreement to voluntarily dismiss their claims, Respondents agree that they would not pursue any claims against Claimants for attorneys fees, costs or expenses incurred in this case. No other additional consideration has been promised or will be paid or provided to Claimants by Respondents.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated Award may be entered.

AWARD

After considering the pleadings and the Joint Submission of Stipulated Award with request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Statement of Claim is dismissed, with prejudice, with respect to all Respondents.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Dwyer and Bruce's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Dwyer and Bruce must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive

Each party shall bear its respective costs, including attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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

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, Respondent Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

No requests for adjournments were filed in this matter for which fees were assessed.

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 cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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 the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: October 23, 2003 1 session	
Total Forum Fees	= \$1,200.00

The Panel has assessed \$600.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$600.00 of the forum fees jointly and severally to Respondents.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,100.00
Less payments	= \$ 1,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

<i>Frances D. Sheehy, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Charles E. Ray, Esq.</i>	-	<i>Public Arbitrator</i>
<i>S. William Gersten</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Frances D. Sheehy, Esq.
Public Arbitrator, Presiding Chairperson

05/11/05
Signature Date

/s/

Charles E. Ray, Esq.
Public Arbitrator

05/11/05

Signature Date

S. William Gersten
Non-Public Arbitrator

Signature Date

05/26/05

Date of Service (For NASD Dispute Resolution office use only)

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Respondents are jointly and severally liable for:

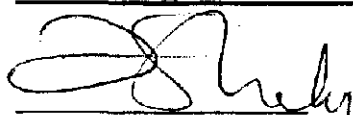
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Charles E. Ray, Esq.	-	Public Arbitrator
S. William Gersten	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures




Frances D. Sheehy, Esq.
Public Arbitrator, Presiding Chairperson

5-11-05
Signature Date

NASD Dispute Resolution

Arbitration No.03-02959

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Charles E. Ray, Esq.

Public Arbitrator

5/11/05
Signature Date

S. William Gersten

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

FROM :NASD

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Charles E. Ray, Esq.
Public Arbitrator

S. William Gersten
Non-Public Arbitrator

Signature Date

5/27/05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)