

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Fred Tiscornia (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Alan Jacobson,
(Respondents)

Case Number: 03-02972

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Fred Tiscornia ("Tiscornia") hereinafter referred to as "Claimant": Sheldon H. Gopstein, Esq., Law Offices of Sheldon H. Gopstein, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Alan Jacobson ("Jacobson") hereinafter collectively referred to as "Respondents": Lauryn J. Hart, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., New York, NY. Previously represented by: Elyse N. Post, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 21, 2003.

Claimant signed the Uniform Submission Agreement: April 7, 2003.

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

Merrill Lynch signed the Uniform Submission Agreement: June 30, 2003.

Jacobson did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant's Statement of Claim asserted the following causes of action: (i) breach of fiduciary duty; (ii) conversion; (iii) negligence; (iv) breach of contract; (v) respondeat superior; (vi) apparent authority; and (vii) failure to supervise on the part of Merrill Lynch. Claimant's claims involved unspecified securities.

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

RELIEF REQUESTED

Pursuant to the Statement of Claim, Claimant requested compensatory damages in the amount of \$140,345.00, plus commissions, interest, NASD fees, attorneys' fees and costs, and such other and further relief as may be just, proper, and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety, that the Arbitration Panel issue an order that directs all references of this proceeding and the underlying complaint be expunged from the CRD records of the individual Respondent, that the cost of this proceeding be assessed against the Claimant, and that Respondents be awarded such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Jacobson did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Respondent Alan Jacobson was dismissed with prejudice by agreement of the parties on or about April 23, 2004.

Merrill Lynch and Claimant advised NASD Dispute Resolution that on or about April 24, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

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 such an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

- 1) Respondent Merrill Lynch is dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from respondent Alan Jacobson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent Alan Jacobson must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.

- 3) By agreement of the parties, each party shall bear its own costs and expenses associated with the above-referenced arbitration. All NASD Dispute Resolution fees and costs for this matter have been assessed as indicated below.
- 4) Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. has received or will collect the non-refundable filing fees for each claim as follows:

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. In this matter, the member firm Merrill Lynch, Pierce, Fenner & Smith Inc., 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

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 a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: January 28, 2004 1 session

One (1) Pre-hearing conference session with the Panel @ \$1125.00/session = \$ 1125.00
Pre-hearing conferences: December 4, 2004 1 session

Total Forum Fees	= \$1,575.00
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1. The Panel has assessed \$1,125.00 of the forum fees for the Pre-hearing conference held on December 4, 2004 against Claimant.
2. The Panel has assessed \$450.00 of the forum fees for the Pre-hearing conference held on January 28, 2004 against Respondent Merrill Lynch.

Fee Summary

1. Claimant is solely liable for:
Initial Filing Fee = \$ 300.00

<u>Forum Fees</u>	= \$ 1,125.00
<u>Total Fees</u>	= \$ 1,425.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch is solely liable for:


Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$ 450.00
<u>Total Fees</u>	= \$5,650.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 450.00

All balances are due and payable to NASD Dispute Resolution

ARBITRATION PANEL

Cynthia A. DiMarco, Esq.	-	Public Arbitrator, Presiding Chair
Howard J. Stiefel	-	Public Arbitrator
Marvin Schleyer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Cynthia A. DiMarco, Esq.
Public Arbitrator, Presiding Chair

8-3-04
Date

Howard J. Stiefel
Public Arbitrator

Date

Marvin Schleyer
Non-Public Arbitrator

Date

June 16, 2004

Date of Service (For NASD office use only)

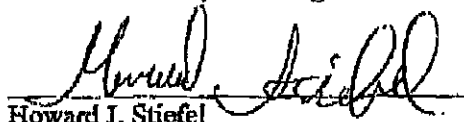
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Cynthia A. DiMarco, Esq.
Public Arbitrator, Presiding Chair

Date



Howard J. Stiefel
Public Arbitrator

6/14/04

Date

Marvin Schleyer
Non-Public Arbitrator

Date

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