
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Ella Joan Replogle, Trustee of the Replogle Trust

Case Number: 03-03051

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Robert A. Bos

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Ella Joan Replogle, Trustee of the Replogle Trust, hereinafter referred to as "Claimant":
John R. Kiefner, Esq., Kiefner & Renaldo, P.A., St. Petersburg, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent MLPFS") and Robert A. Bos ("Respondent Bos"), hereinafter collectively referred to as "Respondents": Alex J. Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 25, 2003.
Claimant signed the Uniform Submission Agreement: May 16, 2003.
Statement of Answer filed by Respondents on or about: September 3, 2003.
Respondent MLPFS signed the Uniform Submission Agreement: June 9, 2003.
Respondent Bos did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: common law fraud; violation of Section 517.301 of the Florida Statutes; violation of NASD conduct rules; negligence; gross negligence; breach of fiduciary duty; breach of conduct; churning; and, negligent supervision. Claimant alleged that Respondent Bos liquidated all of her annuities at once, generating a large tax burden; recommended unsuitable investments in mutual funds and a preferred stock; recommended an unsuitable investment manger; and, generated excessive commissions by churning her account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and contended that: 1) Claimant's accountant and estate attorney established an estate plan for Claimant's family in order to decrease tax liability; 2) the accountant and estate attorney referred Claimant to Respondent MLPFS; 3) Claimant instructed Respondent MLPFS to

establish accounts on her behalf in accordance with the estate plan; 4) Respondent MLPFS and Respondent Bos acted at all times under directions given by Claimant regarding her account; 5) Claimant became upset because her investments failed to perform to her expectations as a result of the market decline beginning in March 2000; and, 6) Claimant is seeking to have Respondents MLPFS and Bos become hindsight insurers against the uncertainties of the market.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$500,000.00; unspecified punitive damages; statutory interest; costs; attorneys' fees pursuant to Section 517.211(6) of the Florida Statutes; and, such other relief as the Panel deemed appropriate.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety and expunge all references to this matter from Respondent Bos' NASD Central Registration Depository ("CRD") record.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about June 16, 2005, the parties filed with the NASD a proposed Stipulated Award in which Claimant elected to voluntarily dismiss all claims, including but not limited to all claims for attorneys' fees, costs and expenses, against Respondents, with prejudice. In consideration of Claimant's agreement to voluntarily dismiss her claims, Respondents agree that they would not pursue any claims against Claimant for attorneys' fees, costs or expenses incurred in this case.

AWARD

After considering the pleadings, and having been apprised of the parties' resolution of this matter and the joint request that the Panel enter this Stipulated Award, the Panel has determined as follows:

The Statement of Claim is dismissed with prejudice with respect to Respondent MLPFS and Respondent Bos.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bos' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Bos must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

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

All other requests for relief, which are not addressed specifically in this Stipulated Award, including Claimant's request for relief under Section 517.301 of the Florida Statutes and Claimant's request for punitive damages, are denied, with prejudice.

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. Accordingly, Respondent MLPFS is a member firm and a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 12-15, 2005, adjournment requested by Claimant. = \$1,125.00

The panel waived the total adjournment fee of \$1,125.00.

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 three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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 @ \$1,125.00/session = \$1,125.00

Pre-hearing conference: February 26, 2004 1 session

Total Forum Fees = \$1,125.00

The Panel assessed the forum fees of \$562.50 to Respondent MLPFS.
The Panel assessed the forum fees of \$562.50 to Respondent Bos.

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 in this matter.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$5,762.50
<u>Less payments</u>	= \$2,450.00
Balance Due NASD Dispute Resolution	= \$3,312.50

Respondent BOS is solely liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

William Kent Brown	-	Public Arbitrator, Presiding Chairperson
Kimberley A. Gilmour, Esq.	-	Public Arbitrator
Joel H. Holzer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ _____
William Kent Brown
Public Arbitrator, Presiding Chairperson

June 21, 2005
Signature Date

/s/
Kimberley A. Gilmour, Esq.
Public Arbitrator

June 21, 2005
Signature Date

/s/
Joel H. Holzer
Non-Public Arbitrator

June 20, 2005
Signature Date

June 22, 2005
Date of Service (For NASD Dispute Resolution office use only)

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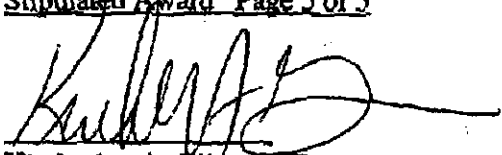
WK Brown

William Kent Brown
Public Arbitrator, Presiding Chairperson

6/21/05

Signature Date

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Kimberley A. Gilmour, Esq.
Public Arbitrator

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JUN 22 2003

FL ARBITRATION

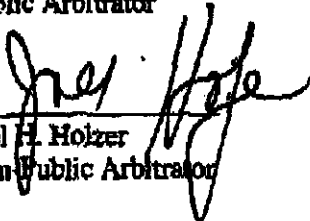
8/21/05
Signature Date

Joel H. Holzer
Non-Public Arbitrator

Signature Date

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

Kimberley A. Gilmour, Esq.
Public Arbitrator


Joel H. Holzer
Non-Public Arbitrator

Signature Date


Signature Date

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