

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Eduardo Mellado and Aggie Mellado,
Individually and as Trustees to the
Mellado Family Living Trust

Case Number:

03-03126

Name of the Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

Hearing Site: Chicago, Illinois

NATURE OF THE DISPUTE

Customers v. Member Firm

REPRESENTATION OF PARTIES

James Eccleston, Esq., and Ronald M. Amato, Esq., of the firm Shaheen, Novoselsky, Staat, Filipowski, & Eccleston PC, located in Chicago, Illinois, represented Claimants Eduardo Mellado and Aggie Mellado, Individually and as Trustees to the Mellado Family Living Trust, hereinafter collectively referred to as "Claimants."

Peter E. Cooper, Esq., and Mitchel Goldberg, Esq., of the firm Lawrence, Kamin, Saunders & Uhlenhop, LCC, located in Chicago, Illinois, represented Respondent Merrill Lynch Pierce Fenner & Smith, Inc., hereinafter referred to as "Respondent."

CASE INFORMATION

Claimants filed the Statement of Claim on or about April 29, 2003. Claimants each signed a Uniform Submission Agreement on May 20, 2003. On the same date they also executed a Uniform Submission Agreement on behalf of the Mellado Family Living Trust.

Respondent filed a Statement of Answer on August 18, 2003. Respondent Merrill Lynch signed the Uniform Submission Agreement on July 1, 2004.

Respondent filed a Motion to Dismiss on September 30, 2004, Claimant filed a Response in Opposition on October 20, 2004, and Respondent replied in support on October 29, 2004.

Respondents filed a Counterclaim on April 29, 2004 against Eduardo Mellado and Aggie Mellado, Individually. Claimants filed a Motion to Strike Counterclaim on May 3, 2004,

Respondent responded on May 3, 2004, Claimants filed a Reply in Support on May 6, 2004, Respondent filed a Rebuttal on June 2, 2004.

Claimants also filed a Motion to Dismiss Counterclaim and for Sanctions on May 10, 2004, Respondent responded on May 11, 2004, and Claimants replied on May 21, 2004.

Respondent filed a Pre-Hearing Memorandum of Law and Renewed Motion to Dismiss on December 29, 2004.

Claimants filed a Pre-Hearing Memorandum of Law on December 29, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; Negligence; Breach of Fiduciary Duty; Breach of Contract; Negligent Supervision; and *Respondent Superior*.

The causes of action relate to investments in stocks and corporate bonds.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: claims are barred by the relevant statute of limitation; failure to mitigate; no basis in law or fact for attorney's fees; ratification; Respondent acted in good faith and, accordingly, cannot be held liable as a control person; estoppel; waiver; and assumption of risk.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$299,000.00, punitive damages, interest, attorney's fees, costs, and any such relief the Panel deems just and equitable.

Respondent requested denial and dismissal of claims, costs, attorney's fees, that NASD fees be assessed against Claimants, and such further relief as the Panel believes proper.

OTHER ISSUES CONSIDERED AND DECIDED

On July 19, 2004, the Panel issued an Order denying Claimants' Motion to Strike Counterclaim and Motion to Dismiss Counterclaim and for Sanctions.

On December 20, 2004, the Panel issued an Order denying Respondent's Motion to Dismiss.

On December 30, 2004, the Panel issued an Order denying Respondent's Renewed Motion to Dismiss.

At hearing, Respondent presented a Motion for Directed Verdict, the Panel denied the Motion.

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. Any and all claims asserted by the Eduardo Mellado and Aggie Mellado, Individually and as Trustees to the Mellado Family Living Trust against Merrill Lynch Pierce Fenner & Smith, Inc., are denied in their entirety.
2. Respondent Merrill Lynch Pierce Fenner & Smith, Inc., however, shall reimburse the Mellado Family Living Trust and Eduardo Mellado the sum of \$300.00 for the NASD non-refundable filing fee.
3. Respondent Merrill Lynch Pierce Fenner & Smith, Inc.'s, Counterclaim against Eduardo Mellado and Aggie Mellado, Individually, is denied.
4. Except for the forum fees associated with this matter, which are specified herein, the parties shall bear their own costs, including attorney's fees.
5. 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
Counterclaim filing fee	= \$ 1,000.00

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, Merrill Lynch, as a party, is assessed the following fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with

the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator at \$450.00 = \$ 1,350.00

Pre-hearing conferences: May 4, 2004 1 session
October 14, 2004 1 session
June 21, 2004 1 session

Three (3) Pre-hearing sessions with Panel at \$1,125.00 = \$ 3,375.00

Pre-hearing conferences: January 12, 2004 1 session
July 19, 2004 1 session
November 2, 2004 1 session

Eight (8) Hearing sessions at \$1,125.00 = \$ 9,000.00

Hearing Dates: January 18, 2005 2 sessions
January 19, 2005 2 sessions
January 20, 2005 2 sessions
January 21, 2005 2 sessions

Total Forum Fees = \$13,725.00

The Panel assessed \$13,725.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

FEE SUMMARY

Claimants, Eduardo Mellado and Aggie Mellado, Individually and as Trustees to the Mellado Family Living Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due from NASD Dispute Resolution	= \$ 1,125.00

Respondent Merrill Lynch Pierce Fenner & Smith, Inc., is solely liable for:

Member Fees	= \$ 5,200.00
Counterclaim Filing Fee	= \$ 1,000.00
Forum Fees	= \$13,725.00
Total Fees	= \$19,925.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$14,725.00

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

ARBITRATION PANEL

Richard A. Van Kalker, Esq.	-	Public Arbitrator, Presiding Chairperson
Michael S. Matek, Esq.	-	Public Arbitrator
Dwight R. Erskine, II, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Richard A. Van Kalker

01/28/05

Richard A. Van Kalker, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ Michael S. Matek

01/28/05

Michael S. Matek, Esq.
Public Arbitrator

Signature Date

/s/ Dwight R. Erskine

01/28/05

Dwight R. Erskine, II, CFP
Non-Public Arbitrator

Signature Date

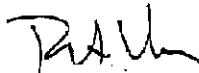
01/28/05

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

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Concurring Arbitrators' Signatures



Richard A. Van Kalker, Esq.
Public Arbitrator, Presiding Chairperson

11/20/05
Signature Date

Michael S. Matek, Esq.
Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 03-03126
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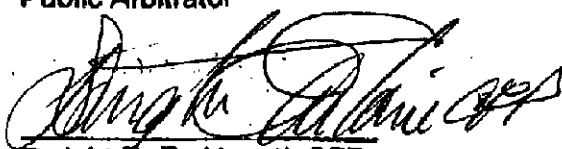
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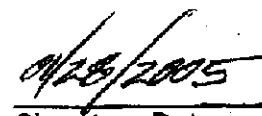
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Michael S. Matek, Esq.
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