

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Melrose Opticians Inc., Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez, Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez, Third-Party Claimants v. The Optical Store of Aspen, Inc. and Larry Sands, Third-Party Respondents

Case Number: 03-03183

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant Melrose Opticians Inc.:

George A. Barton, Esq.
Law Offices of George A. Barton
Kansas City, Missouri

For Respondents and Third-Party Claimants
Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Kathleen R. Gamez:

Robert M. Taylor, Esq.
James P. Delphey, Esq.
Seltzer Caplan McMahon Vitek
San Diego, California

CASE INFORMATION

Statement of Claim filed: April 29, 2003

Claimant's Uniform Submission Agreement signed: April 29, 2003

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez's Joint Statement of Answer and Third Party Claim filed: June 25, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: May 14, 2003

Respondent Kathleen R. Gamez's Uniform Submission Agreement signed: May 22, 2003

CASE SUMMARY

Claimant Melrose Opticians Inc. alleged breach of contract, breach of fiduciary duty, negligence, and failure to supervise. Claimant's allegations concerned two cash accounts in its name, one allegedly established without proper authority, the wrongful transfer of money from one account to the other, and the allegedly wrongful withdrawal of funds by The Optical Shop of Aspen, Inc. and Larry Sands.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim, asserted various affirmative defenses, and filed a Third-Party Statement of Claim against The Optical Shop of Aspen, Inc. and Larry Sands.

Third-Party Claimants Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez alleged breach of contract, indemnity, and contribution. Third-Party Claimants' allegations concerned the same two cash accounts in question, both allegedly established by proper authority, and that the transfer of funds related to a dispute between principals in a family business enterprise.

RELIEF REQUESTED

Claimant Melrose Opticians Inc. requested \$559,408.71 in compensatory damages, pre- and post-award interest, \$300,000.00 in punitive damages, and costs including attorneys' fees

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez requested dismissal of the Claimant's Statement of Claim in its entirety, costs, and expungement of all reference to the above captioned arbitration from Respondent Kathleen R. Gamez's registration records maintained by the NASD Central Registration Depository.

Third-Party Claimants Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez requested declaratory relief, unspecified compensatory damages, indemnification with respect to any damages awarded to Claimant Melrose Opticians, Inc., equitable contribution with respect to any damages awarded to Claimant Melrose Opticians, Inc., and costs, and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On June 25, 2003, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez filed a third party claim against the Optical Shop of Aspen Inc. and Larry Sands alleging breach of certification, representations and warranties in account agreement, and contribution. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez in their third party claim requested unspecified compensatory damages, indemnity, and costs including

attorneys' fees. On September 2, 2003, NASD Dispute Resolution received notice that the third-party respondents Optical Shop of Aspen Inc. and Larry Sands refused to submit to NASD arbitration.

On July 29, 2003, Claimant Melrose Opticians Inc. and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On December 12, 2003 the parties stipulated to moving the hearing site from Los Angeles, California to Las Vegas, Nevada.

On June 15, 2004, the parties stipulated to returning to the hearing site Los Angeles, California from Las Vegas, Nevada.

On September 30, 2004 Claimant Melrose Opticians, Inc. dismissed with prejudice its Statement of Claim against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez.

On October 4, 2004 Third-Party Claimant Kathleen R. Gamez dismissed with prejudice her Third-Party Statement of Claim against The Optical Shop of Aspen, Inc. and Larry Sands.

On November 9, 2004 Third-Party Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. dismissed with prejudice its Third-Party Statement of Claim against The Optical Shop of Aspen, Inc. and Larry Sands.

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

After considering the pleadings, and the Parties' request for this stipulated award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant Melrose Opticians, Inc. and Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez have entered into a confidential settlement agreement.
2. Claimant Melrose Opticians, Inc.'s claims are dismissed with prejudice.
3. Third-Party Claimants Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez's claims are dismissed with prejudice.
4. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Kathleen R. Gamez's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Kathleen R. Gamez must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The parties shall bear their respective costs, including attorney's fees.
6. All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
Third-Party claim filing fee	= \$1,250.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$4,000.00
Total Member Fees	= \$7,000.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: December 5, 2003	1 session
July 22, 2004	1 session
Total Forum Fees	= \$2,400.00

1. The Panel assessed \$ 1,200.00 of the forum fees to Claimant Melrose Opticians Inc.
2. The Panel assessed \$ 1,200.00 of the forum fees jointly and severally to Respondents/Third-Party Claimants Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez.

Fee Summary

1. Claimant Melrose Opticians Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,575.00
<u>Less payments</u>	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$(3,000.00)
Balance Due NASD Dispute Resolution	= \$ 4,000.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen R. Gamez are charged with the following fees and costs:

Third-Party Claim Filing Fee	= \$ 1,250.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 2,450.00
<u>Less Payments made by Merrill Lynch, Pierce, Fenner & Smith, Inc.</u>	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Herbert M. Schoenberg

A. Joel Klein

Harriet A. Kottick

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Herbert M. Schoenberg

Herbert M. Schoenberg
Chair, Public Arbitrator

May 12, 2005

Signature Date

A. Joel Klein
Public Arbitrator

Signature Date

Harriet A. Kottick
Non-Public Arbitrator

Signature Date

June 6, 2005
Date of Service

ARBITRATION PANEL

Herbert M. Schoenberg

A. Joel Klein

Harriet A. Kottick

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Herbert M. Schoenberg
Chair, Public Arbitrator

Signature Date


A. Joel Klein
Public Arbitrator

5/13/05
Signature Date

Harriet A. Kottick
Non-Public Arbitrator

Signature Date

June 6, 2005
Date of Service

ARBITRATION PANEL

<i>Herbert M. Schoenberg</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>A. Joel Klein</i>	-	<i>Public Arbitrator</i>
<i>Harriet A. Kottick</i>	-	<i>Non-Public Arbitrator</i>

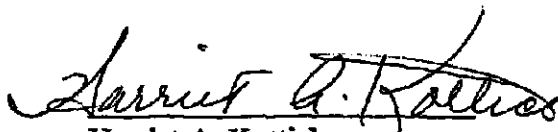
Concurring Arbitrators' Signatures

Herbert M. Schoenberg
Chair, Public Arbitrator

Signature Date

A. Joel Klein
Public Arbitrator

Signature Date



Harriet A. Kottick
Non-Public Arbitrator

5/12/05

Signature Date

June 6, 2008

Date of Service