

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Robert F. LiVolsi and Susan K. LiVolsi

and

Case Number: 03-03208
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Harold Benkoski

NATURE OF DISPUTE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Robert F. LiVolsi and Susan K. LiVolsi ("Claimants") were represented by Mark T. Mitchell, Esq., Austin, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Harold Benkoski ("Benkoski") were represented by Michael L. Davitt, Esq., of Jones Day, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about May 1, 2003.

The Submission Agreement of Claimants, Robert F. LiVolsi and Susan K. LiVolsi, was signed on or about April 30, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Harold Benkoski on or about July 8, 2003.

The Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about May 20, 2003.

The Submission Agreement of Respondent, Harold Benkoski, was signed on or about July 7, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; omission of facts; suitability; misrepresentations; failure to supervise; and negligence. Claimants alleged that if not for the misrepresentations and omissions of Benkoski, the Claimants would never have sold their Crossroads stock in a prepaid forward contract. Claimants further allege that the entirety of the Crossroads stock was unrestricted and the Claimants were free to liquidate their stock on the open market, either in a block or over time. Claimants further alleged that if not for the cadre of lies by Benkoski, the Claimants would not have paid off their LIBOR mortgage, taken out a margin loan to pay their taxes, or taken out a home equity loan. Moreover, Claimants alleged that the continued incompetence and indifference of Merrill Lynch's employees led to a further decline in the value of the Claimants portfolio.

Unless specifically admitted in their Answer, Respondents, Merrill Lynch and Benkoski, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the claim fails to state a cause of action for which relief can be granted; Claimants entered into the prepaid forward contracts with full knowledge of all material facts and on the recommendation of their independent advisors; any losses incurred are a result of market price fluctuations and are beyond the control and responsibility of Respondents; and the claims are barred, in whole or in part, by the doctrine of laches, ratification, waiver, estoppel, contributory negligence, comparative negligence, and unclean hands in that, Claimants did not timely raise any objections to the subject transactions.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory	\$7,000,000.00
Punitive/Exemplary Damages	Unspecified
Other Costs	Unspecified
Attorney's Fees	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Post Hearing Submissions were filed on or about July 22, 2004.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable for and shall pay to Claimants, Robert F. LiVolsi and Susan K. LiVolsi, the sum of \$275,000 in compensatory damages;
- 2.) Respondent, Harold Benkoski, is liable for and shall pay to Claimants, Robert F. LiVolsi and Susan K. LiVolsi, the sum of \$37,000 in compensatory damages;
- 3.) Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to Claimants, Robert F. LiVolsi and Susan K. LiVolsi, the sum of \$300,000 in attorney's fees pursuant to Texas statutes;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby 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 = \$600.00

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

Member surcharge	= \$3350.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$5500.00

The Arbitration 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. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1200.00	= \$ 2,400.00
Pre-hearing conferences: October 27, 2003 1 session	
November 13, 2003 1 session	
Eight (8) Hearing sessions x \$1200.00	= \$ 9,600.00
Hearing Dates: July 12, 2004 2 sessions	
July 13, 2004 2 sessions	
July 14, 2004 2 sessions	
July 15, 2004 2 sessions	
Total Forum Fees	= \$12,000.00

The Arbitration Panel has assessed \$12,000 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

FEE SUMMARY

Claimants, Robert F. LiVolsi and Susan K. LiVolsi, is liable for:

Initial Filing Fee	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 1,800.00
Refund Due NASD Dispute Resolution	= \$ 1,200.00

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

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 12,000.00
Total Fees	= \$ 21,600.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 12,000.00

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

ARBITRATION PANEL

Thomas A. Martin, Esq. - Public Arbitrator, Presiding Chair
Sherry R. Wetsch, Esq. - Public Arbitrator
Stanley H. Frank, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas A. Martin
Thomas A. Martin
Public Arbitrator, Presiding Chair

August 13, 2004
Signature Date

/s/ Sherry R. Wetsch
Sherry R. Wetsch
Public Arbitrator

August 14, 2004
Signature Date

/s/ Stanley H. Frank
Stanley H. Frank
Non-Public Arbitrator

August 16, 2004
Signature Date

August 16, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

Thomas A. Martin, Esq. - Public Arbitrator, Presiding Chair
Sherry R. Wetsch, Esq. - Public Arbitrator
Stanley H. Frank, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

Thomas A. Martin
Thomas A. Martin
Public Arbitrator, Presiding Chair

08-13-04
Signature Date

Sherry R. Wetsch
Sherry R. Wetsch
Public Arbitrator

Signature Date

Stanley H. Frank
Stanley H. Frank
Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

Signature Date


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Public Arbitrator

8/14/04
Signature Date

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Non-Public Arbitrator

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Signature Date

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Stanley H. Frank
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