
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Thomas Shirley

Case Number: 03-03407

Names of the Respondents
Merrill Lynch, Pierce, Fenner and Smith, Inc.
Matthew Grossman
Kerry Clapper

Hearing Site: Tampa, Florida

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

REPRESENTATION OF PARTIES

For Thomas Shirley, hereinafter referred to as "Claimant": William B. Young, Esq., Hooper & Weiss, LLC, Orlando, Florida.

For Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill"), Matthew Grossman ("Grossman") and Kerry Clapper ("Clapper"), hereinafter collectively referred to as "Respondents": Neil S. Baritz, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 8, 2003.

Claimant signed the Uniform Submission Agreement: March 18, 2003.

Statement of Answer filed by Respondents on or about: July 21, 2003.

Respondents Merrill, Grossman and Clapper did not execute signed Uniform Submission Agreements.

CASE SUMMARY

Claimant alleged the following causes of action: unsuitability; fraud; securities fraud; negligence; breach of contract; failure to supervise and control person liability. The causes of action relate to investments in Claimant's account consisting of various common stocks including but not limited to: Cisco Systems Inc., America Online, Lucent Technologies, Intel Corporation, and Texas Instrument.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of at least \$96,254.12 plus interest from the date the losses were incurred to the date of the Arbitration hearing plus punitive damages, attorneys' fees, costs and any

other damages the panel may deem just and fair.

Respondents requested a dismissal of this action in its entirety, an order of expungement of this matter from the NASD Central Registration Depository ("CRD") records of Respondents Grossman and Clapper, together with a determination that Respondents are the prevailing party in this action, plus all costs incurred in connection with the defense of this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Merrill, Grossman and Clapper did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to NASD Code of Arbitration Procedure (the "Code") and, having answered the claim are bound by the determination of the Panel on all issues submitted.

On or about December 13, 2004, Claimant notified NASD Dispute Resolution that the parties had settled this arbitration proceeding.

On or about February 28, 2005, Respondents submitted and Claimant agreed to submit a proposed Stipulated Award for submission to the Panel directing Expungement of Grossman's and Clapper's NASD CRD record.

On or about February 28, 2005, Claimant filed with NASD Dispute Resolution Claimant's Notice of Voluntary Dismissal With Prejudice.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's withdrawal of his claims against Respondents is accepted and Respondents are dismissed from this matter with prejudice.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Grossman's and Clapper's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Grossman and Clapper must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 225.00

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 Merrill is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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:

The Panel has assessed a three-day cancellation fee of \$300.00 as follows:

\$150 to Claimant.

\$150 to Respondents Merrill, Grossman and Clapper, jointly and severally.

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.

There were no injunctive relief fees assessed during these proceedings.

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 @ \$750.00 per session	= \$ 750.00
Pre-hearing conference: January 14, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 750.00

The Panel has assessed forum fees of \$375.00 to Respondents Merrill, Grossman and Clapper, jointly and severally.

The Panel has assessed forum fees of \$375.00 to Claimant.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 375.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 375.00
<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$1,125.00
<u>Less payments</u>	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Merrill, Grossman and Clapper are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 375.00
Total Fees	= \$ 525.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 525.00

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

ARBITRATION PANEL

Darryl C. Wilson, Esq.
Thomas R. Carlsen
Andrew G. Fellios

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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Darryl C. Wilson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

_____/s/_____
Andrew G. Fellios
Non-Public Arbitrator

Signature Date


Dissenting Arbitrator's Signature

_____/s/_____
Thomas R. Carlsen
Public Arbitrator

Signature Date

March 29, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures


Darryl C. Wilson, Esq.
Public Arbitrator, Presiding Chairperson

March 15, 2005
Signature Date

Thomas R. Carlsen
Public Arbitrator

Signature Date

Andrew G. Fellios
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

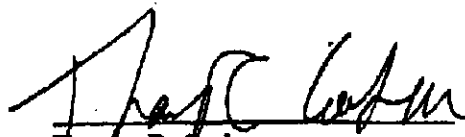
Darryl C. Wilson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Andrew G. Fellice
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



Thomas R. Carlson
Public Arbitrator

3-29-05
Signature Date

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

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Concurring Arbitrators' Signatures

Darryl C. Wilson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas R. Carlsen
Public Arbitrator

Signature Date



Andrew G. Fellios
Non-Public Arbitrator



Signature Date

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