
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Jim R. Hyde
Sheila Hyde

Case Number: 03-03408

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Lawrence Brashears

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Jim R. Hyde and Sheila Hyde, hereinafter collectively referred to as "Claimants": James Richard Hooper, Esq., Hooper & Weiss, L.L.C., Orlando, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS") and Lawrence Brashears ("Brashears"), hereinafter collectively referred to as "Respondents": Jonathan Wehle, Litigation Counsel with Respondent MLPFS, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 23, 2003.

Claimants signed the Uniform Submission Agreement: March 25, 2003.

Statement of Answer filed by Respondents on or about: July 10, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: July 10, 2003.

Respondent Brashears signed the Uniform Submission Agreement: July 10, 2003.

CASE SUMMARY

Claimants alleged the following causes of action: 1) unsuitability; 2) negligence; 3) breach of contract; 4) breach of fiduciary duty; 5) *respondeat superior*; 6) violation of NASD Conduct Rule 2110; 7) omissions and misrepresentation; 8) failure to supervise; 9) violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 adopted thereunder; 10) common law fraud; 11) violations of SRO rules; and 12) violations under the laws of New York and Florida. The causes of action relate to investments in various equities and mutual funds such as AIM Constellation Fund and AIM Weingarten Fund.

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

RELIEF REQUESTED

Claimants requested: 1) compensatory damages of not less than \$27,329.85; 2) disgorgement of all commissions, fees and other charges paid by Claimants to Respondents; 3) interest; 4) punitive damages; 5) costs; 6) attorneys' fees; and 7) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal, with prejudice, of the Statement of Claim in its entirety; 2) costs; 3) expungement of all reference to the above captioned arbitration from Respondent Brashears' registration records maintained by the NASD Central Registration Depository ("CRD"); and 4) such other relief the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about August 20, 2004, Claimants filed their dismissal, with prejudice, of their claims against Respondents.

On or about November 5, 2004, Respondents filed their request to re-open the above-referenced arbitration proceeding and for the entry of a Stipulated Award with recommendation of expungement as to Respondent Brashears' CRD record. Claimants did not object to the request. On or about January 3, 2005, the Panel granted Respondents' request.

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, Respondents' request for the entry of a Stipulated Award, and the Panel's Order entered on or about January 3, 2005, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

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

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 150.00

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 = \$ 600.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$1,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

On or about March 12, 2004, the parties filed their joint motion to adjourn the evidentiary hearing scheduled for April 21 – 23, 2004. On or about April 5, 2004, the Panel: 1) granted the motion; 2) adjourned the evidentiary hearing; and 3) divided the \$600.00 adjournment fee in the amount of \$150.00 to Claimant Jim R. Hyde, \$150.00 to Claimant Sheila Hyde, \$150.00 to Respondent MLPFS, and \$150.00 to Respondent Brashears.

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:

There were no three-day cancellation fees assessed during these proceedings.

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 a single arbitrator @ \$450.00 per session = \$ 450.00
Pre-hearing conference: April 2, 2004 1 session

One (1) Pre-hearing session with Panel @ \$600.00 per session = \$ 600.00
Pre-hearing conference: November 18, 2003 1 session

Total Forum Fees = \$1,050.00

The Panel has assessed forum fees in the amount of \$525.00 jointly and severally to Claimants.

The Panel has assessed forum fees in the amount of \$525.00 jointly and severally to Respondents.

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

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 525.00</u>
Total Fees	= \$ 675.00
<u>Less payments</u>	<u>= \$ 675.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Claimant Jim R. Hyde is solely liable for:

<u>Adjournment Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 150.00
<u>Less payments</u>	<u>= \$ 150.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Claimant Sheila Hyde is solely liable for:

<u>Adjournment Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 150.00
<u>Less payments</u>	<u>= \$ 150.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$2,350.00
<u>Adjournment Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$2,500.00
<u>Less payments</u>	<u>= \$2,500.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Brashears is solely liable for:

<u>Adjournment Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 150.00
<u>Less payments</u>	<u>= \$ 150.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 525.00
<u>Total Fees</u>	= \$ 525.00
<u>Less payments</u>	= \$ 525.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

<i>James Barry Wright</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Thomas K. Goldie</i>	-	<i>Public Arbitrator</i>
<i>Michael D. Walsh</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 /s/
James Barry Wright
Public Arbitrator, Presiding Chairperson

January 5, 2005
Signature Date

 /s/
Thomas K. Goldie
Public Arbitrator

January 4, 2005
Signature Date

 /s/
Michael D. Walsh
Non-Public Arbitrator

January 4, 2005
Signature Date

January 5, 2005
Date of Service (For NASD Dispute Resolution office use only)

Jan. 4, 2005 8:08PM NASD

No. 2600 P. 6/6

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Respondents are jointly and severally liable for:

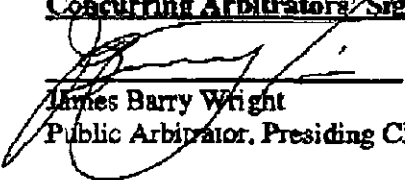
Forum Fees	= \$ 525.00
Total Fees	= \$ 525.00
Less payments	= \$ 525.00
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James Barry Wright
Public Arbitrator, Presiding Chairperson

1/5/05
Signature Date

Thomas K. Goldie
Public Arbitrator

Signature Date

Michael D. Walsh
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution
Arbitration No. 03-03408
Stipulated Award Page 5

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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NASD Dispute Resolution
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 James Barry Wright
 Public Arbitrator, Presiding Chairperson

 Signature Date

 Thomas K. Goldie
 Public Arbitrator

 Signature Date

Michael D. Walsh

 Michael D. Walsh
 Non-Public Arbitrator

1/4/2005

 Signature Date

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