

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Thomas D. Johannson
Ann Tipton Johannson

Case Number: 03-03414

Names of the Respondents

Bruce S. Dunham, III
Mark D. Stevens
Jesse P. Boyd
David J. Dukehart
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Baltimore, MD

Nature of the Dispute: Customers vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants, Thomas D. Johannson and Ann Tipton, hereinafter collectively referred to as "Claimants", were represented by Eduardo Rodriguez, Esq., Hooper & Weiss, LLC, Orlando, Florida.

Respondent, Bruce S. Dunham, III ("Dunham"), was represented by Charles M. Dalziel, Jr., Esq. and Joseph B. Alonso, Esq., Brock, Clay and Calhoun, P.C., Marietta, Georgia.

Respondents, Mark D. Stevens ("Stevens"), Jesse P. Boyd ("Boyd"), David J. Dukehart ("Dukehart"), and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), were represented by Harry D. Frisch, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on May 8, 2003.

Amended Statement of Claim filed on October 21, 2003.

Claimant Thomas D. Johannson filed an undated Uniform Submission Agreement on behalf of himself and as Attorney in Fact for Ann Tipton Johannson.

Statement of Answer filed by Respondent Dunham on July 22, 2003.

Respondent Dunham signed the Uniform Submission Agreement on July 18, 2003.

Motion to Dismiss filed by Respondent Dunham on January 23, 2004.

Statement of Answer and Counterclaim filed by Respondents Stevens, Boyd, Dukehart, and Merrill Lynch on July 23, 2003.

Respondent Stevens signed the Uniform Submission Agreement on July 27, 2004.

Respondent Boyd did not file a Uniform Submission Agreement.

Respondent Dukehart signed the Uniform Submission Agreement on July 27, 2004.
A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on July 28, 2004.
Claimants filed an Answer to the Counterclaim on February 12, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: unsuitability, negligence, breach of contract, breach of fiduciary duty, violations of federal and state law, violation of SRO rules, failure to supervise, and *respondeat superior*. The causes of action relate to the performance of accounts at Merrill Lynch from 1995 to 2002.

Unless specifically admitted in his Answer, Respondent Dunham denied the allegations made in the Statement of Claim and asserted the following defenses, among others: estoppel, ratification, laches, statute of limitations, waiver, failure to state a claim, contributory and comparative negligence, and failure to allege causation.

Unless specifically admitted in their Answer, Respondents Stevens, Boyd, Dukehart, and Merrill Lynch denied the allegations in the Statement of Claim and Amended Statement of Claim and asserted the following defenses, among others: failure to state a claim; statutes of limitations; the claims are barred by the doctrines of waiver, estoppel, and laches; failure to mitigate damages; and ratification.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

| | |
|----------------------|--------------------|
| Compensatory Damages | \$172,170.96 |
| Punitive Damages | amount unspecified |
| Interest | amount unspecified |
| Attorneys' Fees | amount unspecified |
| Other Costs | amount unspecified |

Claimants in their Amended Statement of Claim requested:

| | |
|----------------------|--------------------|
| Compensatory Damages | \$356,453.28 |
| Punitive Damages | amount unspecified |
| Interest | amount unspecified |
| Attorneys' Fees | amount unspecified |
| Other Costs | amount unspecified |

Respondent Dunham in his Statement of Answer and Motion to Dismiss requested that all references to this arbitration be expunged from his record maintained by the NASD Central Registration Depository ("CRD"), and that the Arbitration Panel (the "Panel") award him costs and expenses.

In their Statement of Answer Respondents Stevens, Boyd, Dukehart, and Merrill Lynch requested

that the Statement of Claim be dismissed in its entirety. In their Counterclaim against Thomas D. Johannson, Respondents requested that they be indemnified against any loss as a result of this arbitration and that they be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Boyd did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Claimants dismissed all claims against Respondent Dunham on February 9, 2004.

On or about February 22, 2005, the parties entered into a confidential settlement agreement.

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

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing, and upon motion of all parties for entry of such an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

1. Claimants dismissed with prejudice all claims against Respondent Dunham Respondent on February 9, 2004;
2. Pursuant to the confidential settlement agreement reached between all parties, all claims against Respondent Dunham and Respondents Stevens, Boyd, Dukehart and Merrill Lynch are dismissed with prejudice;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dunham's, Stevens', Boyd's and Dukehart's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Dunham, Stevens, Boyd and Dukehart must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. All claims for punitive damages and attorneys' fees are denied in their entirety;
5. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
6. Any and all relief not specifically addressed herein is denied in its entirety.

EEFS

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 |
| Counter claim 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch is a party.

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$2,750.00 |
| Total Member Fees | = \$5,200.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

| | |
|---|--------------|
| July 14-17, 2004 adjournment by Respondents, Stevens, Boyd, Dukehart, and Merrill Lynch | = \$1,125.00 |
|---|--------------|

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|---|--------------|
| One (1) Pre-hearing session with Panel @ \$1,125.00 | = \$1,125.00 |
| Pre-hearing conference: February 9, 2004 1 session | |
| Total Forum Fees | = \$1,125.00 |

1. The Panel has assessed \$482.13 of the forum fees to Respondent Merrill Lynch.
2. The Panel has assessed \$160.71 of the forum fees to Respondent Dunham.
3. The Panel has assessed \$160.71 of the forum fees to Respondent Stevens.
4. The Panel has assessed \$160.71 of the forum fees to Respondent Boyd.
5. The Panel has assessed \$160.71 of the forum fees to Respondent Dukehart.

FFS SUMMARY

1. Claimant is assessed and shall pay the following fees:

| | |
|---------------------|--------------|
| Initial Filing Fee | = \$ 300.00 |
| Total Fees | = \$ 300.00 |
| Less payments | = \$1,675.00 |
| Refund Due Claimant | = \$1,375.00 |

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

| | |
|-------------------------------------|--------------|
| Filing Fee | = \$1,000.00 |
| Member Fees | = \$5,200.00 |
| Forum Fees | = \$ 482.13 |
| Total Fees | = \$6,682.13 |
| Less payments | = \$6,682.13 |
| Balance Due NASD Dispute Resolution | = \$ 00.00 |

3. Respondent Dunham is assessed and shall pay the following fees:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 160.71 |
| Total Fees | = \$ 160.71 |
| Less payments | = \$ 00.00 |
| Balance Due NASD Dispute Resolution | = \$ 160.71 |

4. Respondent Stevens is assessed and shall pay the following fees:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 160.71 |
| Total Fees | = \$ 160.71 |
| Less payments | = \$ 00.00 |
| Balance Due NASD Dispute Resolution | = \$ 160.71 |

5. Respondent Boyd is assessed and shall pay the following fees:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 160.71 |
| Total Fees | = \$ 160.71 |
| Less payments | = \$ 00.00 |
| Balance Due NASD Dispute Resolution | = \$ 160.71 |

6. Respondent Dukchart is assessed and shall pay the following fees:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 160.71 |
| Total Fees | = \$ 160.71 |
| Less payments | = \$ 00.00 |
| Balance Due NASD Dispute Resolution | = \$ 160.71 |

7. Respondents are jointly and severally assessed and shall pay the following fees:

| | |
|--------------------------|--------------|
| Postponement Fee | = \$1,125.00 |
| Total Fees | = \$1,125.00 |
| Less payments | = \$4,017.87 |
| Refund Due Merrill Lynch | = \$2,892.87 |

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

ARBITRATION PANEL

05/25/2005 16 05 FAX 202 728 8082

NASD DISPUTE RESOLUTION

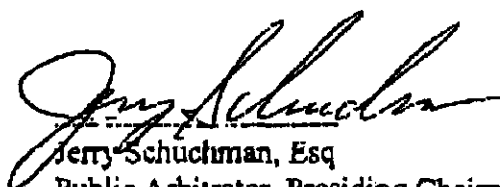
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Award Page 6

Jerry Schuchman, Esq.
Richard F. Bicker, PhD.
C. Gregory Ellison

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

(Concurring Arbitrators' Signatures)


Jerry Schuchman, Esq.
Public Arbitrator, Presiding Chairperson

5/26/2005
Signature Date

Richard F. Bicker, PhD
Public Arbitrator, Panelist

Signature Date

C. Gregory Ellison
Non-Public Arbitrator, Panelist

Signature Date

8/16/05
Date of Service (For NASD Dispute Resolution office use only)

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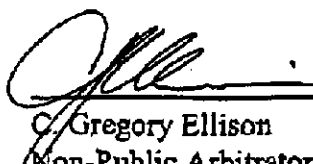
(Concurring Arbitrators' Signatures)

Jerry Schuchman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard F. Bieker, PhD
Public Arbitrator, Panelist

Signature Date


C. Gregory Ellison
Non-Public Arbitrator, Panelist

6/7/05
Signature Date

6.14.05

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