
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Jon Alan Siwik
Claudia T. Siwik
Jon Chad Siwik
Todd Alan Siwik

Case Number: 03-03461

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
David Wisehaupt

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Jon Alan Siwik ("J.A. Siwik"), Claudia T. Siwik ("C.T. Siwik"), Jon Chad Siwik ("J.C. Siwik") and Todd Alan Siwik ("T.A. Siwik"), hereinafter collectively referred to as "Claimants": Andrew Fulton, IV, Esq., Ward, Damon & Posner, P.A., West Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and David Wisehaupt ("Wisehaupt"), hereinafter collectively referred to as "Respondents": Neil Baritz, Esq., Baritz & Coleman, L.L.P., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 12, 2003.

Claimants J.A. Siwik and C.T. Siwik signed the Uniform Submission Agreements: April 28, 2003.

Claimants J.C. Siwik and T.A. Siwik signed the Uniform Submission Agreements: May 5, 2003.

Statement of Answer filed by Respondents on or about: July 18, 2003.

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

Respondent Wisehaupt signed the Uniform Submission Agreement: June 2, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: fraudulent and/or negligent misrepresentation; breach of fiduciary duty; negligence; and under the Second Restatement of Torts Section 552, for information negligently supplied. The causes of action relate to, but are

not limited to, the purchase and sale of Tyco, Arriba, Exodus, Buy.com, At Home Corp., Ascentral and various Japanese stocks in the Claimants' accounts.

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

RELIEF REQUESTED

Claimants requested compensatory damages of approximately \$718,000.00, unspecified punitive damages, costs and any such further relief as is just and proper.

Respondents requested a dismissal of Claimants' Statement of Claim in its entirety, an order of expungement of this matter from the NASD Central Registration Depository ("CRD") record of Respondent Wisehaupt, together with an award of attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties resolved the issues presented in their pleadings on September 28, 2004. In connection with the resolution of this matter, Respondents asserted that, because of the nature of the claims, this action should only have been filed against Respondent MLPFS, and not Respondent Wisehaupt. Accordingly, Claimant agreed to cooperate with Respondent Wisehaupt's efforts to have the action expunged from Respondent Wisehaupt's CRD record. In connection with the resolution of the claims, the parties agreed that upon the satisfaction of the terms of resolution, that each of Claimants and Respondents shall be barred from bringing any action based on or including the claims for which this action has been or could have been brought and that this matter be dismissed with prejudice as to all Respondents. The only issue presented to the Panel is this Stipulated Award relating to expungement.

AWARD

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

Claimants' withdrawal of claims is accepted and Respondents are dismissed from this matter with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Wisehaupt'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, Respondent Wisehaupt must obtain confirmation from a court of competent jurisdiction before the NASD 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 Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 375.00

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 = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Total Member Fees = \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

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:

No three-day cancellation fees were incurred in this matter.

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.

No injunctive relief fees were incurred in this matter.

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 the Panel @ \$1,200.00/session = \$1,200.00

Pre-hearing conference: December 11, 2003 1 session

Total Forum Fees = \$1,200.00

The Panel assessed forum fees of \$600.00 to Claimants, jointly and severally.

The Panel assessed forum fees of \$600.00 to Respondents, jointly and severally.

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.

No administrative costs were incurred in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 600.00
Total Fees	= \$1,575.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
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

Paul W. Sterman, CPA	-	Public Arbitrator, Presiding Chairperson
Sherry Puro	-	Public Arbitrator
Dominic P. Romano	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Paul W. Sterman, CPA
Public Arbitrator, Presiding Chairperson

February 21, 2005
Signature Date

/s/
Sherry Puro
Public Arbitrator

February 20, 2005
Signature Date

/s/
Dominic Romano
Non-Public Arbitrator

February 23, 2005
Signature Date

February 28, 2005
Date of Service (For NASD Dispute Resolution use only)

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of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

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<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

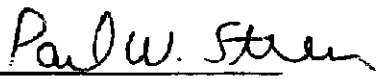
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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Sherry Puro	-	Public Arbitrator
Dominic P. Romano	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Paul W. Sterman, CPA
Public Arbitrator, Presiding Chairperson

2/21/2005
Signature Date

Sherry Puro
Sherry Puro
Public Arbitrator

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Signature Date

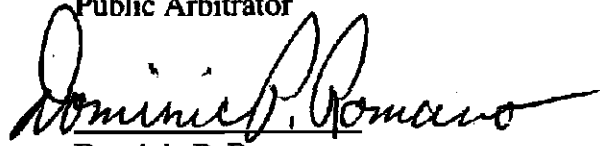
Dominic P. Romano
Dominic P. Romano
Non-Public Arbitrator

Signature Date

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

Sherry Puro
Public Arbitrator

Signature Date



Dominic P. Romano
Non-Public Arbitrator



Signature Date

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