

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimants

Estate of Robert P. Kunkel, DeAnn T. Gaeth-Kunkle
and Yellow Ribbon, Inc.

v.

03-03468
Denver, Colorado

Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Stephan D. Papasoff

Nature of Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

Estate of Robert P. Kunkel, DeAnn T. Gaeth-Kunkle and Yellow Ribbon, Inc. ("**Claimants**") were represented by James S. Helfrich, Esq., of Gersh & Helfrich, LLP, Denver, Colorado.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Merrill Lynch**") and Stephan D. Papasoff ("**Papasoff**"), hereinafter referred to as ("**Respondents**"), were represented by David E. Bamberger, Esq., and Elyse N. Post, Esq., of Merrill Lynch Pierce Fenner & Smith, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 12, 2003. Submission Agreements of Claimants were signed on or about May 8, 2003.

A Joint Statement of Answer was filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Stephan D. Papasoff on or about July 28, 2003. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on or about March 5, 2004. Submission Agreement of Respondent Stephan D. Papasoff was signed on or about February 25, 2004.

Claimants filed a Notice of Substitution of Personal Representative of Plaintiff's Estate for Plaintiff Robert P. Kunkel on or about August 22, 2003.

CASE SUMMARY

Claimants asserted causes of action including the following: violations of the Colorado Consumer Protection Act, breach of fiduciary duty, negligence, fraud, deceit, and failure to supervise. The causes of action related to Claimants' allegation that Respondents convinced Claimants that they

could finance a real estate transaction and avoid capital gains taxes by borrowing money from a Merrill Lynch mortgage lending program and placing their stocks on margin. Claimants asserted that Respondents discouraged Claimants from their original plan of liquidating stocks to pay for the real estate transaction by misrepresenting the amount of capital gains they would have to pay. Claimants also stated that due to their financial objectives, placing the stocks on margin was unsuitable.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted; any losses alleged by Claimants were proximately caused by Claimants' own conduct or negligence; Claimants authorized, approved, participated in and ratified the acts and transactions complained of and upon which recovery is sought and accordingly, are estopped from recovery herein; Respondent Merrill Lynch properly supervised the servicing of Claimants' accounts; and all transactions upon which Claimants based their alleged claims were conducted in accordance with all applicable NASD and Exchange rules and regulations and in compliance with all applicable provisions of state and federal law.

RELIEF REQUESTED

Claimants requested an award in the amount of \$355,598 in compensatory damages. In addition, Claimants requested statutory treble damages of \$ 1,066,794, attorney's fees, interest, costs and any other relief that the Panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Respondent Stephan D. Papasoff's permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing, the parties fully and finally settled all claims by and between them and Claimants agreed that all claim assert by them against Respondents will be withdrawn. As part of their settlement agreement, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings and the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators orders as follows:

1. Claimants' claims, having been withdrawn, are dismissed with prejudice in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Stephan D. Papasoff'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 Stephan D. Papasoff must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are dismissed with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 500
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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	= \$ 2,800
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,000

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Chairperson x \$ 450 = \$ 450

Pre-hearing conference: 02/24/04 1 session

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: 12/09/03 1 session

Total Forum Fees = \$ 1,650

The Arbitration Panel has assessed \$ 825 of the forum fees to jointly and severally to Estate of Robert P. Kunkel, DeAnn T. Gaeth-Kunkle and Yellow Ribbon, Inc.

The Arbitration Panel has assessed \$ 825 of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner & Smith, Inc. and Stephan D. Papasoff.

Pursuant to Rule 10332(g) of NASD Code of Arbitration Procedures: *Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.* As NASD Dispute Resolution received notice of the settlement within eight business days of the first scheduled hearing, Claimants' remaining hearing session deposit is retained.

Fee Summary

Claimants, Estate of Robert P. Kunkel, DeAnn T. Gaeth-Kunkle and Yellow Ribbon, Inc. are jointly and severally liable for:

Initial Filing Fee	= \$ 500
Forum Fees	= \$ 825
Hearing Session Deposit Retained	= \$ 375
Total Fees	= \$ 1,700
Less payments	= \$ 1,700
Balance Due NASD Dispute Resolution	= \$ 0

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

Member Fees	= \$ 8,550
Total Fees	= \$ 8,550
Less payments	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Stephan D. Papasoff are jointly and severally liable for:

Forum Fees	= \$ 825
Total Fees	= \$ 825
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 825

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

ARBITRATION PANEL

Gerhard L. Schopen - Public Arbitrator, Presiding Chair
Dennis R. Frohlich, Esq. - Public Arbitrator
Melanie J. Marmorstein - Non-Public Arbitrator

Concurring Arbitrators:

Gerhard L. Schopen
Public Arbitrator, Presiding Chair

Signature Date

Dennis R. Frohlich, Esq.
Public Arbitrator

Signature Date

Melanie J. Marmorstein
Non-Public Arbitrator

Signature Date

6/14/04

Date of Service (NASD use only)

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

Balance Due NASD Dispute Resolution	= \$ 0
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Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Stephan D. Papasoff are jointly and severally liable for:

Balance Due NASD Dispute Resolution	= \$ 825
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ARBITRATION PANEL

Melanie J. Marmorstein- Non-Public Arbitrator

Concurring Arbitrators:

Gerhard L. Schopen
Public Arbitrator, Presiding Chair

6/4/04
Signature Date

Dennis R. Frohlich, Esq.
Public Arbitrator

Signature Date

Melanie J. Marmorstein
Non-Public Arbitrator

Signature Date

6/14/84
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Dennis R. Frohlich, Esq. - Public Arbitrator
Melanie J. Marmorstein - Non-Public Arbitrator

Concurring Arbitrators:

Gerhard L. Schopen
Public Arbitrator, Presiding Chair

Signature Date


Dennis R. Frohlich, Esq.
Public Arbitrator

May 28, 2004
Signature Date

Melanie J. Marmorstein
Non-Public Arbitrator

Signature Date

6/4/04
Date of Service (NASD use only)

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Arbitration No. 03-03468
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Concurring Arbitrators:

Gerhard L. Schopen
Public Arbitrator, Presiding Chair

Signature Date

Dennis R. Frohlich, Esq.
Public Arbitrator

Signature Date

Melanie J. Marmorstein
Non-Public Arbitrator

Signature Date

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