

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

William Behrens

and

03-03492
Chicago, Illinois

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Kerry Robin Truckly

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

REPRESENTATION OF PARTIES

William Behrens ("**Claimant**") was represented by Sandor L. Grossman, Esq., Chicago, Illinois and Adrew Stoltmann, Esq., Stoltmann Law Offices, P.C., Chicago, Illinois.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Respondent Merrill**") and Kerry Robin Truckly ("**Respondent Truckly**") hereinafter referred to as ("**Respondents**") were represented by John S. Monical, Esq., Lawrence, Kamin, Saunders & Uhlenhop, LLC, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about May 7, 2003. Claimant, William Behrens signed the Uniform Submission Agreement on May 3, 2003.

Joint Answer and Affirmative Defenses to Claimant's Statement of Claim, which contained a counterclaim for attorneys' fees, was filed by Respondents on August 11, 2003. Respondent Merrill Lynch signed a Uniform Submission Agreement on June 18, 2003. Respondent Truckly signed a Uniform Submission Agreement on April 8, 2004.

Respondents filed a Motion for Relief from Claimant's Conduct in Seeking and Obtaining Improper Recusal of Arbitrator on April 8, 2005. Claimant filed a Response to Respondents' Motion for Relief from Claimant's Conduct on April 14, 2005. Respondents filed a Reply in Support of Motion for Relief from Claimant's Conduct in Seeking and Obtaining Improper Recusal of Arbitrator on April 20, 2005.

On November 1, 2005, the parties filed a Joint Agreed Petition for Order of Expungement.

CASE SUMMARY

Claimant asserted the following causes of action: sale of unsuitable investments; excessive trading; failure to supervise; misrepresentations and omissions; violations of the Indiana Blue Sky laws and NASD Conduct Rules; breach of contract; constructive fraud/breach of fiduciary duty; common law fraud; and violations of other Indiana consumer protection statutes. The causes of action relate to unspecified securities. The Claimant alleged that the transactions in his account were unauthorized and were unsuitable and did not meet Claimant's investment needs and objectives.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Truckly denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's claims for relief are barred by the relevant statutes of limitations.
2. Claimant failed to mitigate his damages.
3. Claimant's claims are barred by the second investment decision rule.
4. Claimant ratified all trades.
5. Merrill Lynch acted in good faith and cannot be held liable as a control person of Truckly under Section 20(a) of the Securities Exchange Act of 1934.
6. Claimant is estopped from asserting a claim for damages.
7. Claimant waived his right to recovery.

RELIEF REQUESTED

Claimant requested unspecified actual damages, lost interest, attorneys' fees and costs, various unspecified damages, and punitive damages.

Respondents, Merrill Lynch and Truckly, requested denial and dismissal of all claims in their entirety, attorneys' fees and costs, expungement from Truckly's individual CRD record, and such further relief as the Panel deemed equitable and just.

OTHER ISSUES CONSIDERED & DECIDED

On August 31, 2005, the parties notified the NASD that they had settled the dispute, making moot all pending motions and the claims for damages, costs, and fees.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

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 both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel directs expungement of all references to the above captioned arbitration from the Respondent, Kerry Robin Truckly's registration records maintained by the NASD Central Registration Depository ("CRD") with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Truckly must obtain confirmation from a court of competent jurisdiction before the NASD will execute the expungement directive.
2. The arbitration proceeding is dismissed with prejudice pursuant to the agreement of the parties.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

FEES

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 = \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge	\$	1,500.00
Pre-hearing process fee	\$	750.00

Hearing process fee	\$	2,200.00
Total Member Fees	\$	4,450.00

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:

2 Pre-hearing session(s) with Panel	x	1,000.00	\$	2,000.00
January 14, 2004	1	session		
March 29, 2005	1	session		
Total Forum Fees			\$	2,000.00

The Arbitration Panel has assessed \$1,000.00 of the forum fees to William Behrens.
The Arbitration Panel has assessed \$1,000.00 of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kerry Robin Truckly.

Fee Summary

Claimant, William Behrens, is liable for:

Initial Filing Fee	= \$	250.00
<u>Forum Fees</u>	= \$	1,000.00
Total Fees	= \$	1,250.00
<u>Less payments</u>	= \$	-1,250.00
Balance Due NASD Dispute Resolution	= \$	0.00

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

Member Fees	= \$	4,450.00
Total Fees	= \$	4,450.00
<u>Less payments</u>	= \$	-4,450.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kerry Robin Truckly, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	1,000.00
Total Fees	= \$	1,000.00
<u>Less payments</u>	= \$	-1,000.00

NASD Dispute Resolution

Arbitration No. 03-03492

Stipulated Award Page 5 of 5

Balance Due NASD Dispute Resolution = \$ 0.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Robert Charkovsky, Esq. - Public Arbitrator, Presiding Chair

Mark Miller, Esq. - Public Arbitrator

Robert A. Gordon, CFP - Non-Public Arbitrator

Concurring Arbitrators:

Robert Charkovsky, Esq.
Public Arbitrator, Presiding Chair

Mark Miller

Mark Miller, Esq.
Public Arbitrator

Signature Date

6/9/06

Signature Date

Robert A. Gordon, CFP
Non-Public Arbitrator

Signature Date

8/1/06

Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution = \$ 0.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Robert Charkovsky, Esq. - Public Arbitrator, Presiding Chair
Mark Miller, Esq. - Public Arbitrator
Robert A. Gordon, CFP - Non-Public Arbitrator

Concurring Arbitrators:

Robert Charkovsky, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Mark Miller, Esq.
Public Arbitrator

Signature Date



5-18-06

Robert A. Gordon, CFP
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)