

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Vincent De Fina and Barbara Devine De Fina, c/f Robert UGMA, c/f Jamie UGMA, c/f Vincent UGMA, Barbara Devine De Fina IRA, Vincent De Fina IRA, and Family Partnership (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Daniel J. McMahon (Respondents)

Case Number: 03-03654

Hearing Site: New York, New York

Nature of the Dispute: Customers v. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants Vincent De Fina and Barbara Devine De Fina ("The De Finas"), c/f Robert UGMA ("Robert UGMA"), c/f Jamie UGMA ("Jamie UGMA"), c/f Vincent UGMA ("Vincent UGMA"), Barbara Devine De Fina IRA ("B. De Fina IRA"), Vincent De Fina IRA ("V. De Fina IRA"), and Family Partnership ("Family Partnership") hereinafter collectively referred to as "Claimants": Jerome Olitt, CEO, Arbitration and Mediation Specialists, Inc., Stamford, CT.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Daniel J. McMahon ("McMahon") hereinafter collectively referred to as "Respondents": Ethan Leonard, Esq., The Law Offices of Neal Brickman, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 19, 2003.

Claimants' Response in Opposition to Respondents' Motion to Dismiss filed on or about: September 17, 2003.

Claimant V. De Fina signed the Uniform Submission Agreement: May 15, 2003.

Claimant B. De Fina signed the Uniform Submission Agreement: May 15, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: August 1, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: August 1, 2003.

Respondent McMahon signed the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: improper and reckless management of the accounts; misrepresentations; failure to follow instructions; unsuitable transactions; omission of

fact; failure to supervise; breach of fiduciary duty; and breach of the implied covenants of good faith and fair dealing. The causes of action relate to unspecified securities.

Unless specifically admitted in their Answer and Motion to Dismiss, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$400,000.00; punitive damages in the amount of \$75,000.00; return of all brokerage commissions and fees; as well as other required fees and/or costs.

Respondents requested judgment against Claimants dismissing the complaint in its entirety; expunging these claims from Respondent McMahon's record; awarding Respondents costs, disbursements, and reasonable attorneys' fees incurred in defending this action; and granting any such other and further relief as the NASD, or the designated panel, may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 18, 2004, counsel for Claimants notified NASD Dispute Resolution that the claims against Respondent McMahon were withdrawn, with prejudice.

On or about June 18, 2004, the parties submitted a proposed Stipulated Award for the Panel's approval. The proposed Stipulated Award is attached hereto as Exhibit "A".

The parties agreed that the 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 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. This matter is dismissed with prejudice against Respondent MLPFS.
2. Any and all claims for costs, fees, punitive damages, or attorneys' fees or any other relief, except for that specifically provided for herein, by either party are hereby dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned

arbitration from Respondent Daniel McMahon'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 McMahon must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

4. Any an all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
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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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
<u>Pre-hearing conference: December 1, 2003 1 session</u>	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$1,425.00
Refund Due Claimants	= \$ 562.50

2. Respondent MLPFS is solely liable for:

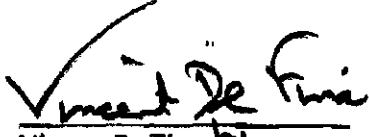
Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures


Vincent De Fina
Claimant

8/3/04
Signature Date


Barbara Devine-De Fina
Claimant

8/3/04
Signature Date

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Respondent

Signature Date

Daniel J. McMahon
Respondent

Signature Date

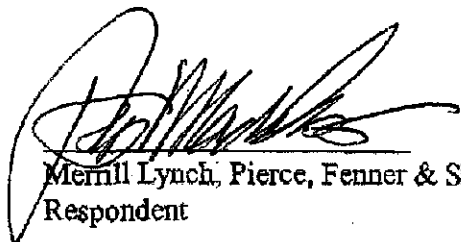
Parties' Signatures

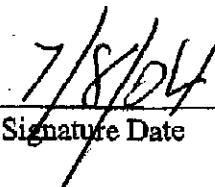
Vincent De Fina
Claimant

Signature Date

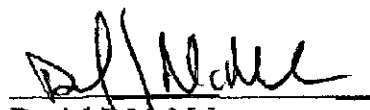
Barbara Devine-De Fina
Claimant

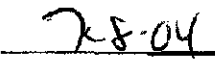
Signature Date


Merrill Lynch, Pierce, Fenner & Smith, Inc.
Respondent


7/8/04

Signature Date


Daniel J. McMahon
Respondent

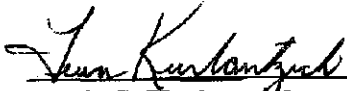

7-8-04

Signature Date

ARBITRATION PANEL

Lewis S. Kurlantzick	-	Public Arbitrator, Presiding Chair
Thomas F. Fox	-	Public Arbitrator
Susan Buckley	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Lewis S. Kurlantzick
Public Arbitrator, Presiding Chair

8/6/04

Signature Date

Thomas F. Fox
Public Arbitrator

Signature Date

Susan Buckley
Non-Public Arbitrator

Signature Date

August 13, 2004

Date of Service (For NASD office use only)

ARBITRATION PANEL

Lewis S. Kurlantzick	-	Public Arbitrator, Presiding Chair
Thomas F. Fox	-	Public Arbitrator
Susan Buckley	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Lewis S. Kurlantzick
Public Arbitrator, Presiding Chair

Signature Date



Thomas F. Fox
Public Arbitrator

8/9/04

Signature Date

Susan Buckley
Non-Public Arbitrator

Signature Date

August 13, 2004

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Thomas F. Fox	-	Public Arbitrator
Susan Buckley	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

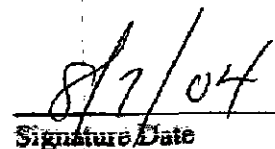
Lewis S. Kurlantzick
Public Arbitrator, Presiding Chair

Signature Date

Thomas F. Fox
Public Arbitrator

Signature Date


Susan Buckley
Non-Public Arbitrator


Signature Date

August 13, 2004

Date of Service (For NASD office use only)

EXHIBIT 1

NATIONAL ASSOCIATION OF SECURITIES
DEALERS, INC.

-----X
In The Matter Of The Arbitration Between

VINCENT DE FINA and BARBARA
DEVINE-DE FINA

Claimants,

- against -

Case No: 03-03654

STIPULATION OF
WITHDRAWAL WITH
PREJUDICE

MERRILL LYNCH PIERCE FENNER & SMITH,
and DANIEL J. MCMAHON,

Respondents.
-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel
of record for the Parties herein that Claimants consent to withdraw the instant action, in its
entirety along with any underlying or included charges, as against Daniel J. McMahon. It is
further stipulated and agreed that this Stipulation may be executed in counterparts and that a
facsimile copy will be deemed as good and binding as if an original.

Dated: Stamford, Connecticut
June 18, 2004



Jerome Olt, CEO
Arbitration and Mediation Specialists, Inc.
Attorneys for Claimants
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Stamford, Connecticut 06901
(203) 359-5580 (Tel)
(203) 359-5880 (Fax)



Ethan Leonard, Esq.
The Law Offices of Neal Brickman
Attorneys for Respondents
317 Madison Avenue - 21st Floor
New York, New York 10017
(212) 986-6840 (Tel)
(212) 986-7691 (Fax)

NASD DISPUTE RESOLUTION, INC.

-----X
In The Matter Of The Arbitration Between

VINCENT DE FINA and BARBARA
DEVINE-DE FINA

Case No: 03-03654

Claimants,

STIPULATED AWARD

- against -

MERRILL LYNCH PIERCE FENNER & SMITH,
and DANIEL J. MCMAHON,

Respondents.

-----X

On reading the stipulated and agreed upon letter submitted by counsel for the respective parties, and dated June 17, 2004 and the exhibits annexed thereto; and it appearing that

That any claims previously existing against Daniel J. McMahon have been withdrawn by Claimants, Vincent DeFina and Barbara Devine-DeFina;

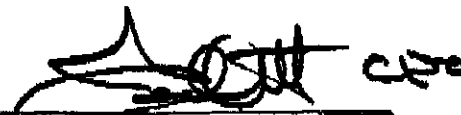
IT IS HEREBY STIPULATED AND DIRECTED that:

1. This matter be, and hereby is, dismissed with prejudice as against Merrill Lynch Pierce Fenner & Smith Incorporated;
2. Any and all claims for costs, fees, punitive damages or attorneys' fees or any other relief, except for that specifically provided for herein, by either Party are hereby dismissed with prejudice; and
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel J. McMahon'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 McMahon must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Dated: New York, New York
June 18, 2004



Ethan Leonard, Esq.
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Attorneys for Merrill Lynch
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