

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Norman Levin, M.D., trustee for the Norman Levin, M.D., Inc. Pension Plan, Norman Levin, M.D. for the Norman Levin, M.D. IRA, Gay R. Levin for the Gay R. Levin IRA, and Jeanette Margolin, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Inc., Respondent

Case Number: 03-03717

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Howard Wollitz, Esq.
Charleston, Revich & Chamberlin LLP
Los Angeles, California

For Respondent:

Robert B. Ericson, Esq.
Danielle J. Tarasen, Esq.
Bingham McCutchen LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: May 20, 2003

Claimants' Joint Uniform Submission Agreement signed: May 16, 2003

Statement of Answer filed by Respondent: August 29, 2003

Respondent's Uniform Submission Agreement signed: July 2, 2003

CASE SUMMARY

Claimants alleged failure to supervise, breach of fiduciary duty, unsuitability, and elder abuse, involving unspecified securities.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimant Norman Levin, M.D., Inc. Pension Plan requested \$1,078,000.00 in compensatory damages plus interest at the legal rate. Claimant Norman Levin, M.D. IRA requested \$91,619.00 in compensatory damages plus interest at the legal rate. Claimant Gay R. Levin IRA requested \$17,820.00 in compensatory damages plus interest at the legal rate. Claimant Jeanette Margolin requested \$77,259.00 in rescission plus interest at the legal rate. All Claimants additionally requested unspecified punitive damages and costs, including forum fees and attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On June 18, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant Jeanette Margolin the sum of \$50,000.00 in compensatory damages.
- 2) All other Claimants' claims are denied in their entirety.
- 3) Claimants' claim of elder abuse is denied in its entirety.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

July 26-28, 2004 hearing adjournment requested by parties	= \$ 1,200.00
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The Panel assessed \$1,200.00 of the adjournment fees jointly and severally to Claimants.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

2 Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$ 900.00
Pre-hearing conference: December 4, 2004 2 sessions

1 Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: January 5, 2004 1 session

13 Hearing sessions @ \$1,200.00/session = \$15,600.00

Hearings: November 15, 2004 2 sessions
November 16, 2004 2 sessions
November 17, 2004 2 sessions
November 18, 2004 2 sessions
December 21, 2004 2 sessions
December 22, 2004 2 sessions
January 3, 2005 1 session

Total Forum Fees = \$17,700.00

1. The Panel assessed \$ 13,275.00 of the forum fees jointly and severally to Claimants Norman Levin, M.D., trustee for the Norman Levin, M.D., Inc. Pension Plan, Norman Levin, M.D. for the Norman Levin, M.D. IRA, and Gay R. Levin for the Gay R. Levin IRA.
2. The Panel assessed \$ 4,425.00 of the forum fees to Respondent.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Adjournment Fee</u>	= \$ 1,200.00
Total Fees	= \$ 1,700.00
<u>Less payments</u>	= \$(500.00)
Balance Due NASD Dispute Resolution	= \$ 1,200.00

2. Claimants Norman Levin, M.D., trustee for the Norman Levin, M.D., Inc. Pension Plan, Norman Levin, M.D. for the Norman Levin, M.D. IRA, and Gay R. Levin for the Gay R. Levin IRA are charged jointly and severally with the following fees and costs:

Forum Fees	= \$13,275.00
<u>Less payments</u>	= \$(1,200.00)
Balance Due NASD Dispute Resolution	= \$12,075.00

3. Respondent is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 4,425.00
Total Fees	= \$12,975.00
<u>Less payments</u>	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 4,425.00

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

ARBITRATION PANEL

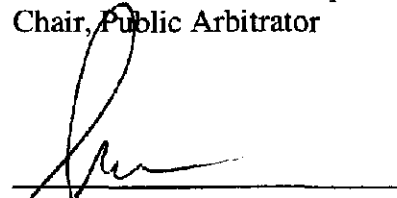
Michael R. Mitchell, Esq.	-	Public Arbitrator, Presiding Chair
Elliott Finkel, Esq.	-	Public Arbitrator
Milton C. Bennett	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael R. Mitchell, Esq.
Chair, Public Arbitrator

1-3-05
Signature Date



Elliott Finkel, Esq.
Public Arbitrator

1-3-05
Signature Date



Milton C. Bennett
Non-Public Arbitrator

1-3-05
Signature Date

1/4/05
Date of Service