

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Roberta J. Meyer, individually and in her capacity as Trustee of the Roberta J. Meyer Rev. Trust
DTD 7/31/87, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen A. Kraft,
Respondents

Case Number: 03-03827

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Mitchell S. Ostwald, Esq.
Law Offices of Mitchell S. Ostwald
Sacramento, California

For Respondents:

Eric Glassman, Esq.
Mennemeier, Glassman & Stroud
Sacramento, California

CASE INFORMATION

Statement of Claim filed: May 28, 2003

Claimants' Uniform Submission Agreement signed: May 18, 2003

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc.
("Merrill Lynch") and Kathleen A. Kraft: August 5, 2003

CASE SUMMARY

Claimants alleged the following claims with respect to investments in various securities, including but not limited to investments in AOL, CORL, COVD, CRA and CSC: 1) Breach of Fiduciary Duty; 2) Fraud (including California Civil Code Sections 1709, 1710, and 1711; 3) Constructive Fraud (Civil Code Section 1573); 4) Failure to Supervise; 5) Elder Abuse; 6) Unfair or Deceptive Practices Against Senior Citizens; and 7) Violation of Federal and State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in an amount according to proof, but not less than \$252,089.00;
2. Disgorgement and restitution of all earnings, profits, compensation and benefits received by the Respondents as a result of their unlawful acts and practices in an amount according to proof;
3. Lost opportunity cost of what the gain from at least \$916,000.00 would have been if suitably invested;
4. Attorney's fees and costs;
5. Pre- and post judgment interest at the legal rate;
6. Punitive damages in an amount according to proof; and
7. Such other and further relief as the Panel may deem just and proper.

Respondents requested that the Panel dismiss Claimants' Statement of Claim; enter an award in Respondents' favor; expunge any reference to this matter from the regulatory record of Ms. Kraft; assess attorneys' fees and costs against Claimants; and grant such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On October 27, 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.

Respondents did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimants' Claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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) All claims by Claimants, including the claims for punitive damages, are dismissed.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kathleen A. Kraft's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Kathleen A. Kraft must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$300.00
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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, Merrill Lynch is a party and the following fees are assessed:

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

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:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00
Pre-hearing conference: March 10, 2004 1 session

(6) Hearing sessions @ \$1,125.00/session = \$6,750.00
Hearings: February 8, 2005 2 sessions
February 9, 2005 2 sessions
February 10, 2005 2 sessions

Total Forum Fees = **\$7,875.00**

The Panel assessed \$3,937.50 of the forum fees to Claimants, jointly and severally.

The Panel assessed \$3,937.50 of the forum fees to Respondent Merrill Lynch.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,937.50
Total Fees	= \$ 4,237.50
<u>Less Payments</u>	= \$(1,425.00)
Balance Due NASD-DR	= \$ 2,812.50

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 3,937.50
Total Fees	= \$ 9,137.50
<u>Less Payments</u>	= \$(6,400.00)
Balance Due NASD-DR	= \$ 2,737.50

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

ARBITRATION PANEL

Brian F. Kram, Esq.	-	Public Arbitrator, Presiding Chair
Richard L. Rubin	-	Public Arbitrator
Edgar N. Stone	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Brian F. Kram, Esq.
Chair, Public Arbitrator

2/15/05
Signature Date

Richard L. Rubin
Public Arbitrator

Signature Date

Edgar N. Stone
Non-Public Arbitrator

Signature Date

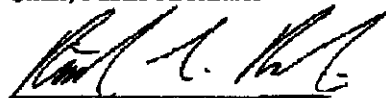
2/17/05
Date of Service

ARBITRATION PANEL

Brian F. Kram, Esq.	-	Public Arbitrator, Presiding Chair
Richard L. Rubin	-	Public Arbitrator
Edgar N. Stone	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Brian F. Kram, Esq.
Chair, Public Arbitrator



Richard L. Rubin
Public Arbitrator

Signature Date

Feb. 16, 2005
Signature Date

Edgar N. Stone
Non-Public Arbitrator

Signature Date

2/17/05
Date of Service

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Richard L. Rubin	-	Public Arbitrator
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Brian F. Kram, Esq.
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Signature Date

Richard L. Rubin
Public Arbitrator

Signature Date

Edgar N. Stone

Edgar N. Stone
Non-Public Arbitrator

2/16/05

Signature Date

2/17/05

Date of Service