

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Karen B. Miner and Karen B. Miner IRA (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kathleen Newell (Respondents)

Case Number: 03-03847

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimants Karen B. Miner ("Miner") and Karen B. Miner IRA ("Miner IRA") hereinafter collectively referred to as "Claimants": James B. Davis, Esq., Newbury, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kathleen Newell ("Newell") hereinafter collectively referred to as "Respondents": Ellen M. Kramer, Esq., Cohen Rosenthal & Kramer, LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: May 21, 2003.

Brief in Opposition to Motion to Dismiss filed on or about: October 5, 2003.

Claimant Miner signed the Uniform Submission Agreement: June 30, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: September 22, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 8, 2003.

Respondent Newell signed the Uniform Submission Agreement: September 29, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; failure to supervise; omission of facts; and negligence. Claimant's claim involved mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$325,000.00; interest; punitive damages in the amount of \$100,000.00; costs and expenses; an order that

Respondents bear all fees of arbitration; and reasonable attorneys' fees. In her Brief in Opposition to the Motion to Dismiss, Claimant requested that the motion be denied.

Respondents requested dismissal of the arbitration, an award of the costs and attorneys' fees incurred, expungement of any mention of Claimants' claims from the Form U-4 and related documentation maintained on behalf of Respondent Newell.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondents moved to compel production of documents and to postpone the hearing. The Panel denied the motions. Also, Respondents moved to dismiss the claim on the basis of the two-year statute of limitations of R.C. §1707.43. In addition, during their closing, Respondents moved for expungement of Respondent Newell in this matter. The Panel granted the motion for expungement of Respondent Newell's CRD on the basis that she was not involved in any sales practice violation, forgery, theft, misappropriation, or conversion of funding on the basis that the material contained in the CRD is defamatory of Kathleen Newell.

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.

AWARD

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

1. Claimant's claims are hereby denied.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kathleen Newell'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 Newell must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

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 = \$300.00

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. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge = \$1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: January 5, 2004 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00

Hearing Dates: June 1, 2004 2 sessions

June 2, 2004 2 sessions

Total Forum Fees = \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees against Claimants.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00
Forum Fees = \$2,812.50
Total Fees = \$3,112.50
Less payments = \$1,425.00
Balance Due NASD Dispute Resolution = \$1,687.50

2. Respondent Merrill Lynch 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

NASD Dispute Resolution
Arbitration No. 03-03847
Award Page 4 of 5

3. Respondents are jointly and severally liable for:

Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,812.50

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

NASD REGULATION

NASD Dispute Resolution
Arbitration No. 03-03847
Award Page 5 of 5

ARBITRATION PANEL

Jason C. Blackford, Esq.	-	Public Arbitrator, Presiding Chairperson
James Dale Ellis, J.D.	-	Public Arbitrator
Thaddeus J. Shalek	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



Jason C. Blackford, Esq.
Public Arbitrator, Presiding Chairperson

June 16, 2004

Signature Date

James Dale Ellis, J.D.
Public Arbitrator

Signature Date

Thaddeus J. Shalek
Non-Public Arbitrator

Signature Date

June 17, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Jason C. Blackford, Esq.
James Dale Ellis, J.D.
Thaddeus J. Shalek

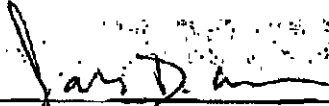
Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

Jason C. Blackford, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



James Dale Ellis, J.D.
Public Arbitrator

6/17/04

Signature Date

Thaddeus J. Shalek
Non-Public Arbitrator

Signature Date

June 17, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Jason C. Blackford, Esq.
James Dale Ellis, J.D.
Thaddeus J. Shalek

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

Jason C. Blackford, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

James Dale Ellis, J.D.
Public Arbitrator

Signature Date


Thaddeus J. Shalek
Non-Public Arbitrator

6/15/04
Signature Date

June 17, 2004
Date of Service (For NASD Dispute Resolution use only)