

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Joseph and Judith Tamashasky

Case Number: 03-03895

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Gregory Kreitz

John C. Murphy

Hearing Site: Philadelphia, Pennsylvania

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

REPRESENTATION OF PARTIES

Claimants, Joseph and Judith Tamashasky, hereinafter collectively referred to as "Claimants", were represented by Robert B. Sommer, Esq., Hergenroeder, Rega and Sommer, LLC, Pittsburgh, Pennsylvania, and Bandali Dahdah, Alexicole, Inc., Burlington, Massachusetts.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Gregory Kreitz ("Kreitz") and John C. Murphy ("Murphy"), hereinafter collectively referred to as Respondents", were represented by Joseph Duffy, Esq., and G. Jeffrey Boujoukos, Esquire Morgan Lewis & Bockius, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on May 28, 2003.

Claimants signed the Uniform Submission Agreement on May 6, 2003.

Statement of Answer filed by Respondents on August 21, 2003.

A representative of Respondent Merrill executed the Uniform Submission Agreement on August 21, 2003.

Respondent Kreitz signed the Uniform Submission Agreement on August 21, 2003.

Respondent Murphy signed the Uniform Submission Agreement on August 21, 2003.

Claimants settled all claims against Respondent Merrill Lynch on or about July 9, 2004

Claimants agreed to dismiss all claims against Respondents Kreitz and Murphy on or about July 9, 2004.

Claimants dismissed all claims against Respondents Kreitz and Murphy on or about August 18, 2004.

CASE SUMMARY

Claimants asserted the following causes of action against all Respondents: breach of contract, breach of fiduciary duty, and breach of duty of care. The causes of action relate to the purchase and sale of various unspecified securities.

Respondents filed an Answer to the Statement of Claim, denying any and all allegations and wrongdoing, and asserting the following affirmative defenses: failure to state a claim upon which relief may be granted; Claimants have been negligent in the supervision of their financial affairs and, in particular, the operation of their Merrill Lynch accounts; Claimants were reckless and failed to use the requisite due diligence in the supervision of their financial affairs and, in particular, the operation of their Merrill Lynch account; Claimants failed to act to mitigate their alleged damages, if any; Claimants have sustained no recoverable damages in connection with the matters alleged; to the extent Claimants have incurred any damages, such damages are attributable to market conditions and not to any acts or omissions of Respondents, and Claimants assumed the risks of their investments; Claimants expressly ordered, approved, authorized, participated in and ratified the acts and transactions complained of and upon which recovery is sought, and Claimants accordingly are estopped from recovery herein, including pursuant to the doctrines of ratification, waiver and estoppel; at all times, Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees and at all times acted in good faith and did not at any time, directly or indirectly, induce any acts constituting a cause of action; Respondents breached no duty in tort, contract, under statute or otherwise owed to Claimants; Respondents were not fiduciaries vis-à-vis Claimants; there is no private cause of action for alleged violation of self-regulatory organization rules; and the claims asserted by Claimants are barred, in whole or in part, by applicable statutes of limitation and the doctrine of laches.

RELIEF REQUESTED

Claimants requested compensatory damages in the approximate amount of no less than \$700,000.00, plus interest, costs of arbitration, attorneys' fees, and any further relief the Arbitration Panel (the "Panel") deems appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety, that Respondents be awarded costs and attorneys' fees, and Respondents Kreitz and Murphy requested that all claims in the arbitration alleged against them be expunged from their individual records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

Claimants have voluntarily dismissed from the proceeding Respondents Kreitz and Murphy. Further, Claimants have settled all claims against Respondent Merrill Lynch. Thus, the Parties have fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

After considering the parties' submissions and representations, but without making any findings

of act or conclusions of law, the undersigned Panel order as follows with respect to Respondents Kreitz and Murphy:

1. All claims against Respondents Kreitz and Murphy have been voluntarily dismissed by Claimants;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Respondents Kreitz and Murphy'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, Respondents Kreitz and Murphy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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	= \$ 375.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$ 450	= \$ 450.00
Pre-hearing conference: June 14, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$ 1,200	= \$ 1,200.00

Pre-hearing conference: January 5, 2004 1 session
Total Forum Fees = \$ 1,650.00

1. The Panel has assessed \$ 825.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 275.00 of the forum fees to Respondent Merrill Lynch.
3. The Panel has assessed \$275.00 of the forum fees to Respondent Kreitz.
4. The Panel has assessed \$275.00 of the forum fees to Respondent Murphy.

EEE SUMMARY

Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 825.00
<u>Retained Hearing Session Deposit</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondent, Merrill Lynch, is assessed and shall pay:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 275.00</u>
Total Fees	= \$ 7,275.00
<u>Less payments</u>	<u>= \$ 7,550.00</u>
Refund owed to Respondent Merrill Lynch	= \$ 275.00

Respondent, Kreitz, is assessed and shall pay:

<u>Forum Fees</u>	<u>= \$ 275.00</u>
Total Fees	= \$ 275.00
<u>Less payments</u>	<u>= \$ 275.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondent, Murphy, is assessed and shall pay:

<u>Forum Fees</u>	<u>= \$ 275.00</u>
Total Fees	= \$ 275.00
<u>Less payments</u>	<u>= \$ 275.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

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

ARBITRATION PANEL

Patricia Bird Reed	-	Public Arbitrator, Presiding Chairperson
Howard B. Asher	-	Public Arbitrator, Panelist
Gordon E. Wright	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Patricia Bird Reed
Public Arbitrator, Presiding Chairperson


Signature Date

Howard B. Asher
Public Arbitrator, Panelist

Signature Date

Gordon E. Wright
Non-Public Arbitrator, Panelist


Signature Date

May 17, 2005
Date of Service (For NASD Dispute Resolution office use only)

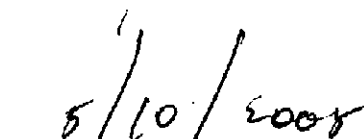
Concurring Arbitrators' Signatures

Patricia Bird Reed
Public Arbitrator, Presiding Chairperson

Signature Date



Howard B. Asher
Public Arbitrator, Panelist



Signature Date

Gordon E. Wright
Non-Public Arbitrator, Panelist

Signature Date

May 17, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Patricia Bird Reed
Public Arbitrator, Presiding Chairperson

Signature Date

Howard B. Asher
Public Arbitrator, Panelist

Signature Date

Gordon E. Wright
Gordon E. Wright
Non-Public Arbitrator, Panelist

May 11, 2005
Signature Date

May 17, 2005
Date of Service (For NASD Dispute Resolution office use only)