

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jack Mizrahi and Sophie Mizrahi (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Vincent Yackery (Respondents)

Case Number: 03-03929

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Jack Mizrahi ("J. Mizrahi") and Sophie Mizrahi ("S. Mizrahi") hereinafter collectively referred to as "Claimants": Andrew M. Jacobs, Esq., Levin Belsky Ross & Daniels, LLP, Garden City, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Vincent Yackery ("V. Yackery") hereinafter collectively referred to as "Respondents": Theodore R. Snyder, Esq., Krebsbach & Snyder, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 29, 2003.

Claimants signed the Uniform Submission Agreement: December 18, 2002.

Joint Statement of Answer filed by Respondents on or about: August 29, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 21, 2003.

Respondent V. Yackery signed the Uniform Submission Agreement: July 30, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: suitability; use of high-pressure sales tactics; breach of fiduciary duty; and violation of industry rules and state statutes. Claimants' claim involved shares of AT&T Corp. and AT&T Wireless.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$430,067.33, plus interest, costs and disbursements, together with other damages that continue to accrue; and

punitive damages in the amount of \$500,000.00 or such other amount as the Panel deems appropriate.

Respondents requested that Claimants' Statement of Claim be dismissed in all respects, that this matter be expunged from the CRD records of Respondent V. Yackery, and that disbursements and costs be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 16, 2004, Respondents filed a motion to dismiss Claimants' claims and asked that the Panel assess a monetary penalty against Claimants for their disregard of discovery obligations. On or about May 12, 2004, the Panel imposed sanctions on Claimants in the amount of \$2,000.00 for failure to provide documents pursuant to the Panel's previous orders.

On or about June 23, 2004, the Panel again ordered Claimants to produce specific documents. Claimant failed to produce those documents and the Panel imposed additional sanctions on Claimants in the amount of \$5,000.00.

On or about July 1, 2004, Respondents filed a motion to dismiss this matter with prejudice. A telephonic pre-hearing conference was held on July 7, 2004. After the conference, the Panel determined to dismiss this matter without prejudice. Upon payment of all fees and sanctions, the Claimants may commence another arbitration in this forum.

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 pre-hearing conferences, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed without prejudice. Upon payment of all fees and sanctions, the Claimants may commence another arbitration in this forum.
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 Vincent Yackery'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 V. Yackery

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 = \$375.00

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 = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 13, 14, 20, and 27, 2004, adjournment by Respondents
Claimants' share = \$1,200.00

June 29 and 30, 2004, adjournment by Respondents
Claimants' share = \$1,500.00

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:

Four (4) Pre-hearing sessions with Panel @ \$1,200.00 = \$4,800.00

Pre-hearing conferences:	December 18, 2003	1 session
	February 17, 2004	1 session
	March 17, 2004	1 session
	July 7, 2004	1 session

Total Forum Fees = \$4,800.00

1. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,200.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$2,700.00
<u>Forum Fees</u>	<u>= \$3,600.00</u>
Total Fees	= \$6,675.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$5,100.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	<u>= \$7,000.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,200.00

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

ARBITRATION PANEL

Sanford S. Stevens, Esq.
Richard E. Lerner, Esq.
Alan S. Braunschweiger

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.



Sanford S. Stevens, Esq.
Public Arbitrator, Presiding Chairperson

7/14/04

Signature Date

Richard E. Lerner, Esq.
Public Arbitrator

Signature Date

Alan S. Braunschweiger
Non-Public Arbitrator

Signature Date

July 15, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Sanford S. Stevens, Esq.
Richard E. Lerner, Esq.
Alan S. Braunschweiger

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.

Sanford S. Stevens, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard E. Lerner

Richard E. Lerner, Esq.
Public Arbitrator

7/15/04
Signature Date

Alan S. Braunschweiger
Non-Public Arbitrator

Signature Date

July 15, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Sanford S. Stevens, Esq.
Richard E. Lerner, Esq.
Alan S. Braunschweiler

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.

Sanford S. Stevens, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard E. Lerner, Esq.
Public Arbitrator

Signature Date

Alan S. Braunschweiler
Alan S. Braunschweiler
Non-Public Arbitrator

July 14 2004
Signature Date

July 15, 2004
Date of Service (For NASD Dispute Resolution use only)