

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Andrew Giovingo Jr. and Camille D. Giovingo, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Gustavo A. Amaral and Pawel E. Szott, Respondents

Case Number: 03-03982

Hearing Site: Las Vegas, Nevada

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

REPRESENTATION OF PARTIES

For Claimants:

James Richard Hooper, Esq.
Hooper & Weiss, LLC
Orlando, Florida

For Respondents:

Harry D. Frisch, Esq.
Merrill Lynch Office of General
Counsel
New York, New York

CASE INFORMATION

Statement of Claim filed: June 2, 2003

Claimants' Joint Uniform Submission Agreement signed: March 23, 2003

Joint Statement of Answer filed by Respondents: July 29, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: July 28, 2004

Respondent Gustavo A. Amaral's Uniform Submission Agreement signed: July 27, 2004

Respondent Pawel E. Szott's Uniform Submission Agreement signed: July 27, 2004

CASE SUMMARY

In their Statement of Claim, Claimants alleged fraud, negligence, breach of contract, breach of fiduciary duty, unsuitability, omissions, misrepresentations and failure to supervise. Claimants' allegations involved investments in Van Kampen Emerging Growth Funds, Pilgrim Worldwide Growth Fund and Mass Investors Growth Fund.

Respondents denied the allegations of wrongdoing as set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$201,774.57 in compensatory damages, disgorgement of all commissions, fees and commissions paid by Claimants to Respondents, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondents Gustavo A. Amaral and Pawel E. Szott's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 29, 2004, the Parties entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

STIPULATED AWARD

After considering the Parties' request for a Stipulated Award the Panel enters the following Stipulated Award in full and final resolution of the issues submitted for determination as follows:

- 1) Pursuant to the confidential Settlement Agreement reached between the Parties, Claimants' claims against Respondents are dismissed in their entirety.
- 2) Respondents will bear their own costs and expenses and any of Claimants' costs and expenses associated with the above-referenced arbitration as determined by NASD Dispute Resolution.

- 3) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.
- 5) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gustavo A. Amaral's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Gustavo A. Amaral must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 6) The Panel Recommends the expungement of all reference to the above-captioned arbitration from Respondent Pawel E. Szott's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Pawel E. Szott must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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	= \$ 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, the member firm Merrill Lynch, Pierce, Fenner, & Smith Incorporated is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

September 28-29, 2004, joint request for adjournment	= Waived
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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 or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00
Pre-hearing conference: November 17, 2004 1 session

Total Forum Fees = \$ 1,125.00

1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Funds applied to Mediation	= \$ 250.00
Less payments	= \$(1,425.00)
Refund Paid to Claimant	= \$ (312.50)
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(6,325.00)
Refund Paid to Merrill Lynch	= \$(1,125.00)
3. Respondents are charged jointly and severally with the following fees and costs:

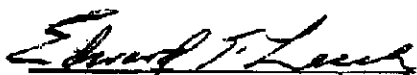
Forum Fees	= \$ 562.50
Less payments made by Merrill Lynch	= \$ 562.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Edward Thomas Leech	-	Public Arbitrator, Presiding Chair
Laurie E. Law, Esq.	-	Public Arbitrator
Lincoln F. Stock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Edward Thomas Leech
Chair, Public Arbitrator

Signature Date

Laurie E. Law, Esq.
Public Arbitrator

Signature Date

Lincoln F. Stock
Non-Public Arbitrator

Signature Date

1/28/05
Date of Service

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Laurie E. Law, Esq.	-	Public Arbitrator
Lincoln F. Stock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Edward Thomas Leech
Chair, Public Arbitrator

Signature Date


Laurie E. Law, Esq.
Public Arbitrator

1/14/2005
Signature Date

Lincoln F. Stock
Non-Public Arbitrator

Signature Date

1/28/05
Date of Service

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Lincoln F. Stock	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Edward Thomas Leech
Chair, Public Arbitrator

Signature Date

Laurie E. Law, Esq.
Public Arbitrator

Signature Date



Lincoln F. Stock
Non-Public Arbitrator

1/20/05

Signature Date

1/28/05

Date of Service