

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mary F. Leibold (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Gene J. Papa, and George Ryan, Esq. (Respondents)

Case Number: 03-04442

Hearing Site: New York, New York

Nature of the Dispute: Customer v. Member, Associated Person, and Non-Member.

REPRESENTATION OF PARTIES

Claimant Mary F. Leibold ("Leibold") hereinafter referred to as "Claimant": Brian J. Neville, Esq., Law Offices of Brian J. Neville, P.C., previously represented by M. Kathryn Meng, Esq., Cianciulli, Meng & Panos, P.C., Uniondale, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Gene J. Papa ("Papa"): William J. Manning, Jr., Esq., Loeb & Loeb, LLP, New York, NY.

Respondent George Ryan, Esq. ("Ryan") did not make an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: June 16, 2003.

Claimant signed the Uniform Submission Agreement: June 14, 2003.

Joint Statement of Answer filed by Respondents Merrill Lynch and Papa on or about: September 25, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: July 18, 2003.

Respondent Papa signed the Uniform Submission Agreement: September 18, 2003.

Respondent Ryan did not file a Statement of Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability; fraud; negligent misrepresentation; breach of contract; unauthorized trading; failure of compliance and fiduciary responsibility; and failure of supervision. The causes of action relate to common stock, corporate bonds, and municipal bonds.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Papa denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative

defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$2,380,000.00; a return of the securities required to be sold to meet the margin calls; punitive damages in the amount of \$2,300,000.00; payment of capital gain taxes incurred in the amount of \$260,000.00; interest, attorneys' fees, and costs; and such other and further damages as the Arbitrators find just.

Respondents Merrill Lynch and Papa requested dismissal of the Statement of Claim in its entirety; that the registration file of Respondent Papa be expunged of any reference to this claim; form fees and costs are assessed against Claimant; attorneys' fees; and such other, further, and different relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent George Ryan, Esq., is not a member of the NASD nor is he an associated person of an NASD member firm and, therefore, was not required to arbitrate in this form and did not submit to NASD Dispute Resolution's jurisdiction.

On or about September 16, 2004, NASD Dispute Resolution was notified that the parties settled this matter and agreed to submit to the Panel a Stipulated Award.

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

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

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

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 = \$600.00

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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
Total Member Fees	= \$8,550.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: July 26, 2004 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: March 18, 2004 1 session	
Total Forum Fees	= \$1,650.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant has been assessed \$550.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill Lynch has been assessed \$550.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Respondent Papa has been assessed \$550.00 of the forum fees.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,800.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Pursuant to Rule 10332(f)/10205(f) of the Code of Arbitration Procedure, NASD shall retain the total initial amount of the hearing session deposited by the Claimant since this office was notified by the parties that they settled or withdrew this matter within 8 business days of the first scheduled hearing session.

2. Respondent Merrill Lynch is solely liable for:

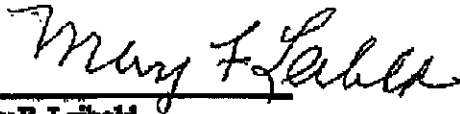
Member Fees	= \$8,550.00
<u>Forum Fees</u>	<u>= \$ 550.00</u>
Total Fees	= \$9,100.00
<u>Less payments</u>	<u>= \$8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 550.00

3. Respondent Papa is solely liable for:

<u>Forum Fees</u>	<u>= \$ 550.00</u>
Total Fees	= \$ 550.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 550.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures



Mary F. Leibold
Claimant

10/12/04
Signature Date

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Respondent

Signature Date

Gabe J. Papa
Respondent

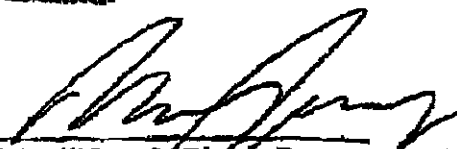
Signature Date

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Parties' Signatures

Mary F. Leibold
Claimant

Signature Date


Merrill Lynch, Pierce, Fenner & Smith, Inc.
Respondent *BY: WILLIAM J. MANN, JR., SA.*
LO28 - LO28

Signature Date


Gene J. Papa
Respondent


Signature Date

ARBITRATION PANEL

John F. Tague, III, Esq.	-	Public Arbitrator, Presiding Chair
Sanford S. Stevens, Esq.	-	Public Arbitrator
Eugene R. Cochrane	-	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.



John F. Tague, III, Esq.
Public Arbitrator, Presiding Chair

10/14/04

Signature Date

Sanford S. Stevens, Esq.
Public Arbitrator

Signature Date

Eugene R. Cochrane
Non-Public Arbitrator

Signature Date

October 25, 2004

Date of Service (For NASD office use only)

ARBITRATION PANEL

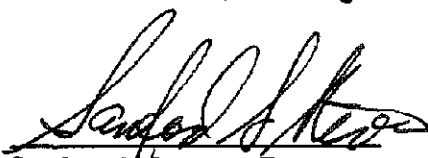
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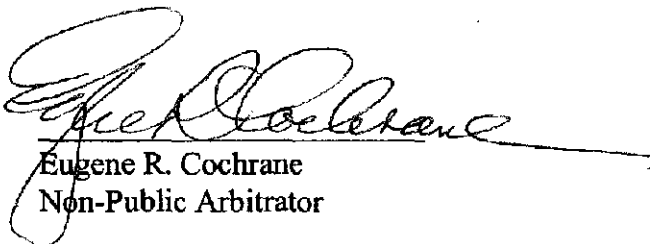
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Public Arbitrator, Presiding Chair

Signature Date

Sanford S. Stevens, Esq.
Public Arbitrator

Signature Date



Eugene R. Cochrane
Non-Public Arbitrator



Signature Date

October 25, 2004

Date of Service (For NASD office use only)