
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Michael Myers, M.D., as Trustee of the
Michael Myers, M.D., P.A. Profit Sharing
Trust and Myers Family Limited Partnership

Case Number: 03-04644

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Keith Dunn

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Michael Myers, M.D., as Trustee of the Michael Myers, M.D., P.A., Profit Sharing Trust and Myers Family Limited Partnership, hereinafter collectively referred to as "Claimants": Michael J. Stanton, Esq., James, Hoyer, Newcomer & Smiljanich, P.A., Tampa, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Keith Dunn ("Dunn"), hereinafter collectively referred to as "Respondents": Neil S. Baritz, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: June 25, 2003.

Claimants signed the Uniform Submission Agreements: June 18, 2003.

Statement of Answer filed by Respondents on or about: September 23, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: August 18, 2003.

Respondent Dunn did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants sued to recover for breach of fiduciary duty, negligence and gross negligence (NYSE Rule 405 and NASD 2310), unsuitability, misrepresentations and omissions, and negligent supervision. The causes of action relate to purchase in Claimants' accounts of various unspecified technology and telecommunications equities.

Unless specifically admitted in their Answer, Respondents denied Claimants' allegations and asserted numerous affirmative defenses to the claims presented.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount between \$500,000.00 and \$1,000,000.00, rescissory damages, interest, punitive damages, costs of this action, including all fees and expenses of expert witnesses, and such other relief as deemed appropriate by the Panel under the circumstances.

Respondents requested a dismissal of Claimants' Statement of Claim in its entirety, expungement of this matter from the Central Registration Depository ("CRD") record of Respondent Dunn, together with a determination that Respondents are the prevailing party in this action with respect to alleged violations of Chapter 517, Florida Statutes, plus all costs incurred in connection with the defense of this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Dunn did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about March 10, 2005, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about March 15, 2005, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for consideration by the Panel.

The parties resolved the issues presented in their pleadings on March 4, 2004. In connection with the resolution of this matter, Respondents asserted that, because of the nature of the claims, this action should have been filed against Respondent MLPFS and not Respondent Dunn. Accordingly, Claimants agreed to cooperate with Respondent Dunn's efforts to have the action expunged from his CRD records. In connection with the claims, the parties agreed that upon the satisfaction of the terms of resolution, that Claimants and Respondents shall be barred from bringing any action based on or including the claims for which this action has been or could have been brought and that this matter be dismissed with prejudice as to all Respondents. The only issue presented to the Panel is the entry of the proposed Stipulated Award relating to expungement.

On April 11, 2005, the Panel conducted a pre-hearing conference with the parties in order to gather additional information from the parties with respect to the issue of expungement.

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

AWARD

Based upon the facts presented in the pleadings, motions and the other papers filed in the case, the stipulation of the parties, and the authority of this Panel, it is hereby ordered that:

1. Claimants' withdrawal of claims is accepted and Respondents are dismissed from this matter, with prejudice.
2. The Panel recommends the expungement of all references to the above captioned arbitration from

Respondent Dunn's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Dunn 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 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, Respondent MLPFS is a member firm and 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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

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 a single arbitrator @ \$450.00 per session = \$ 450.00
Pre-hearing conference: January 6, 2005 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session = \$2,400.00
Pre-hearing conference: March 24, 2004 1 session
April 11, 2005 1 session

Total Forum Fees = \$2,850.00

The Panel has assessed forum fees in the amount of \$825.00 to Claimants, jointly and severally.
The Panel has assessed forum fees in the amount of \$2,025.00 to Respondents, jointly and severally.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 875.00
Total Fees	= \$1,200.00
Less payments	= \$1,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

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

Respondents are jointly and severally liable for:

Forum Fees	= \$2,025.00
Total Fees	= \$2,025.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,025.00

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

ARBITRATION PANEL

James H. Frank, Esq.	-	Public Arbitrator, Presiding Chairperson
Beverly S. Gordon, Esq.	-	Public Arbitrator
Joseph D. Valenti	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
James H. Frank, Esq.
Public Arbitrator, Presiding Chairperson

April 19, 2005
Signature Date

/s/
Beverly S. Gordon, Esq.
Public Arbitrator

April 15, 2005
Signature Date

/s/
Joseph D. Valenti
Non-Public Arbitrator


April 15, 2005
Signature Date

April 25, 2005
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

James H. Frank, Esq.	-	Public Arbitrator, Presiding Chairperson
Beverly S. Gordon, Esq.	-	Public Arbitrator
Joseph D. Valenti	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James H. Frank, Esq.
Public Arbitrator, Presiding Chairperson

APR 19 2005

Signature Date

Beverly S. Gordon, Esq.
Public Arbitrator

Signature Date

Joseph D. Valenti
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

James H. Frank, Esq.
Beverly S. Gordon, Esq.
Joseph D. Valenti


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-
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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

James H. Frank, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Beverly S. Gordon, Esq.
Public Arbitrator



Signature Date

Joseph D. Valenti
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

James H. Frank, Esq.	-	Public Arbitrator, Presiding Chairperson
Beverly S. Gordon, Esq.	-	Public Arbitrator
Joseph D. Valenti	-	Non-Public Arbitrator

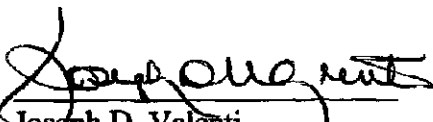
Concurring Arbitrators' Signatures

James H. Frank, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Beverly S. Gordon, Esq.
Public Arbitrator

Signature Date



Joseph D. Valenti
Non-Public Arbitrator



Signature Date

Date of Service (For NASD Dispute Resolution office use only)