
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Margaret Shields Braden TTEE U/A dated
01/20/1995
Margaret S. Braden

Case Number: 03-04943

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith Incorporated
James L. Smythe

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Margaret Shields Braden TTEE U/A dated 01/20/1995 and Margaret S. Braden, hereinafter collectively referred to as "Claimants": Henry T. Swann, III, Esq., St. Augustine, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS") and James L. Smythe ("Smythe"), hereinafter collectively referred to as "Respondents": Neil S. Bartiz, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: July 1, 2003.

Claimant signed the Uniform Submission Agreement: June 11, 2003.

Statement of Answer filed by Respondents on or about: September 2, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: July 19, 2003.

Respondent Smythe did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged causes of action for inappropriate trading activity, unauthorized conduct, unsuitability, and failure to supervise. The causes of action relate to various investments including Micro Cap Growth Fund, Merrill Lynch Funds, Internet Holders, NextLing, Solectron, Sun Microsystems and Tiffany.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$229,000.00.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs; 3) expungement of all reference to the above captioned arbitration from Respondent Smythe's registration records maintained by the NASD Central Registration Depository ("CRD"); and 4) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Smythe 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 October 6, 2004, the parties filed a joint request to adjourn the evidentiary hearing scheduled for October 18, 2004. On or about October 8, 2004, the Panel granted the request, adjourned the evidentiary hearing and waived the adjournment fee in the amount of \$1,125.00.

On or about April 11, 2005, Claimants filed their notice of settlement.

On or about April 12, 2005, Respondents filed their notice of settlement.

The parties resolved the issues presented in their pleadings on April 11, 2005. In connection with the resolution of this matter, Respondents asserted that, because of the nature of the claims, this action should only have been filed against Respondent MLPFS, and not Respondent Smythe. Accordingly, Claimants agreed to cooperate with Respondent Smythe's efforts to have the action expunged from his CRD records. In connection with the resolution of the claims, the parties agreed that upon the satisfaction of the terms of the resolution, that each of 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 was the Stipulated Award relating to expungement.

On or about April 28, 2005, Respondents filed the parties' proposed Stipulated Award. On or about May 9, 2005, the Panel granted the parties' request for the entry of a Stipulated Award.

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.

AWARD

After considering the pleadings and the Panel's Order entered on May 9, 2005, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' withdrawal of claims is accepted and Respondents are dismissed from this matter with

prejudice.

2. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Smythe's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Smythe 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	= \$ 300.00
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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	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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: July 16, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 per session = \$1,125.00
Pre-hearing conference: December 22, 2003 1 session

Total Forum Fees = \$1,575.00

The Panel has assessed forum fees in the amount of \$787.50 jointly and severally to Claimants.

The Panel has assessed forum fees in the amount of \$787.50 jointly and severally to Respondents.

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	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 787.50</u>
Total Fees	= \$1,087.50
<u>Less payments</u>	<u>= \$1,087.50</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 787.50</u>
Total Fees	= \$ 787.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 787.50

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

ARBITRATION PANEL

<i>Beverly S. Gordon, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>William P. Loughnane</i>	-	<i>Public Arbitrator</i>
<i>Suzanne E. Reynolds-Brady</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

<u> /s/ </u>	<u>May 17, 2005</u>
Beverly S. Gordon, Esq.	Signature Date
Public Arbitrator, Presiding Chairperson	

<u> /s/ </u>	<u>May 20, 2005</u>
William P. Loughnane	Signature Date
Public Arbitrator	

<u> /s/ </u>	<u>May 17, 2005</u>
Suzanne E. Reynolds-Brady	Signature Date
Non-Public Arbitrator	

May 20, 2005
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-04943
Stipulated Award Page 5

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William P. Loughname
Suzanne E. Reynolds-Brady

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

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Signature Date

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Public Arbitrator

Signature Date

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Public Arbitrator

May 20 - 2005

Signature Date

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NASD Dispute Resolution
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