

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Camilla P. Ross, individually and as beneficiary of the Camilla P. Ross IRA, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Perry A. Zeigler, Respondents

Case Number: 03-05353

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimants:

Mitchell S. Ostwald, Esq.
Law Offices of Mitchell S. Ostwald
Sacramento, California

For Respondents:

Kenneth C. Mennemeier, Esq.
Mennemeier, Glassman & Stroud LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: July 18, 2003

Claimants' Joint Uniform Submission Agreement signed: July 14, 2003

Joint Statement of Answer filed by Respondents: September 26, 2003

Respondent Merrill Lynch Pierce Fenner & Smith's Uniform Submission Agreement signed: September 16, 2003

Respondent Perry A. Zeigler's Uniform Submission Agreement signed: September 22, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud, constructive fraud, negligence, unsuitability, misrepresentations, omission of facts, violation of state and federal laws and of NASD and NYSE Rules, and failure to supervise. Claimants' allegations concerned transactions in securities, including but not limited to: Cisco, EMC Corp., Intel, Oracle, Sun Microsystems, Texas Instruments, and WorldCom.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$786,000.00 in compensatory damages, disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondents as a result of their acts, lost opportunity costs of what the gain from at least \$930,000.00 would have been if suitably invested, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, forum fees, and costs, including attorney's fees. Respondent Zeigler also requested that all reference to the above captioned arbitration be expunged from his registration records maintained by the NASD Central Registration Depository.

OTHER ISSUES CONSIDERED AND DECIDED

On August 12, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Perry A. Zeigler's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Perry A. Zeigler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The Parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

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 | = \$ 375.00 |
|--------------------------|-------------|

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 is a party and the following fees are assessed:

| | |
|--------------------------|----------------------|
| Member Surcharge | = \$ 2,250.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| Hearing Process Fee | = \$ 4,000.00 |
| Total Member Fees | = \$ 7,000.00 |

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 Panel. The following fees are assessed:

| | |
|------------------------------------------------------------------------------------|-------------|
| One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session | = \$ 450.00 |
| Pre-hearing conference: July 16, 2004 1 session | |

| | |
|---------------------------------------------------------------------------------|---------------|
| One (1) Pre-hearing conference session with the full panel @ \$1,200.00/session | = \$ 1,200.00 |
| Pre-hearing conference: December 2, 2003 1 session | |

| | |
|--------------------------------------------------|---------------|
| Eight (8) Hearing sessions @ \$ 1,200.00/session | = \$ 9,600.00 |
| Hearings: September 7, 2004 2 sessions | |
| September 8, 2004 2 sessions | |
| September 9, 2004 2 sessions | |
| September 10, 2004 2 sessions | |

| | |
|-------------------------|----------------------|
| Total Forum Fees | = \$11,250.00 |
|-------------------------|----------------------|

The Panel assessed the entire balance of the forum fees, in the amount of \$11,250.00, jointly and severally to Respondents Merrill Lynch Pierce Fenner & Smith and Perry A. Zeigler.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested 310 photocopies @\$.50: = \$ 155.00

FEE SUMMARY

1. Claimant Camilla P. Ross is charged with the following fees and costs:

| | |
|------------------------------------------------|-----------------------|
| Initial Filing Fee | = \$ 375.00 |
| <u>Administrative Costs</u> | = \$ 155.00 |
| Total Fees | = \$ 530.00 |
| <u>Less payments</u> | = \$(1,575.00) |
| Refund due from NASD Dispute Resolution | = \$(1,045.00) |

2. Respondent Merrill Lynch Pierce Fenner & Smith is charged with the following fees and costs:

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

3. Respondents Merrill Lynch Pierce Fenner & Smith and Perry A. Zeigler are charged jointly and severally with the following fees and costs:

| | |
|--------------------------------------------|----------------------|
| Forum Fees | = \$11,250.00 |
| <u>Less payments</u> | = \$(0.00) |
| Balance Due NASD Dispute Resolution | = \$11,250.00 |

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

ARBITRATION PANEL

Michael Leymon Coffey
Frank E. Caplan
Thomas J. Doherty

-
-
-

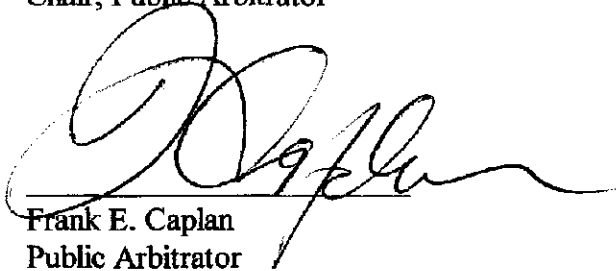
Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures




Michael Leymon Coffey
Chair, Public Arbitrator

10 Sep 04
Signature Date



Frank E. Caplan
Public Arbitrator

9-10-04
Signature Date



Thomas J. Doherty
Non-Public Arbitrator

9/10/04
Signature Date

9/10/04
Date of Service