
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
Magnus and Ida Forth

Case Number: 03-05367

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Magnus and Ida Forth, hereinafter collectively referred to as "Claimants": Adam S. Doner, Esq., Gordon & Doner, P.A., Palm Beach Gardens, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": John C. Kelly, Esq., McCarter & English, LLP, Newark, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: July 22, 2003.

Claimants signed, but did not date, the Uniform Submission Agreement.

Statement of Answer filed by Respondent on or about: October 15, 2003.

Respondent signed the Uniform Submission Agreement: October 15, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: fraud; violation of Chapter 517 of the Florida Statutes; misrepresentation; breach of fiduciary duty; unsuitability; failure to exercise compliance oversight as required by Article III, Section 27 of the NASD Rules of Fair Practice and NYSE Rule 405; violation of Article III, Section I of the NASD Rules of Fair Practice; negligence; and, violation of Section 10(b)(5) of the Securities Exchange Act of 1934. The causes of action relate to the purchase and sale of unspecified technology unit trusts and stocks in Claimants' accounts.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$175,000.00; plus commissions and fees paid; lost interest, income and appreciation; costs; attorney's fees; expert witness fees; and, any other relief deemed just and proper.

Respondent requested that the Statement of Claim be denied in all respects and that the costs of

this proceeding be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

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

AWARD

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

Respondent is liable on the claims of breach of fiduciary duty and negligence and shall pay to Claimants compensatory damages in the amount of \$96,000.00, prejudgment interest specifically excluded.

Respondent is liable and shall pay to Claimants actual costs in an amount not to exceed \$7,500.00.

Respondent is liable and shall pay to Claimants the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

The Panel found no violation of Chapter 517 of the Florida Statutes.

Any and all claims for relief not specifically addressed herein, including Claimants' request for attorney's fees, are denied.

FEEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 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. In this matter, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is 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:

No requests for adjournments were filed in this matter.

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:

No three-day cancellation fees were incurred in this matter.

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.

No injunctive relief fees were incurred in this matter.

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 the Panel @ \$1,125.00		= \$1,125.00
Pre-hearing conference:	February 20, 2004	1 session
Six (6) Hearing sessions @ \$1,125.00		= \$6,750.00
Hearing Dates:	February 7, 2005	2 sessions
	February 8, 2005	2 sessions
	February 9, 2005	2 sessions
Total Forum Fees		= \$7,875.00

The Panel has assessed \$562.50 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$7,312.50 of the forum fees to Respondent.

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 are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,312.50
Total Fees	= \$12,512.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 7,312.50

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

ARBITRATION PANEL

Robert Weiner, Esq.	-	Public Arbitrator, Presiding Chairperson
William R. Alheim	-	Public Arbitrator
Benham Fuhrman, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/	02/10/05
_____ Robert Weiner, Esq. Public Arbitrator, Presiding Chairperson	_____ Signature Date
/s/	02/10/05
_____ William R. Alheim Public Arbitrator	_____ Signature Date
/s/	02/10/05
_____ Benham Fuhrman, CFP Non-Public Arbitrator	_____ Signature Date

02/11/05

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

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Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

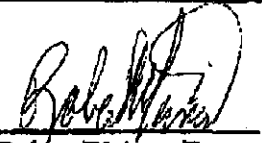
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,312.50
Total Fees	= \$ 12,512.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 7,312.50

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ARBITRATION PANEL

Robert Weiner, Esq.	-	Public Arbitrator, Presiding Chairperson
William R. Alheim	-	Public Arbitrator
Benham Fuhrman, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Robert Weiner, Esq.
Public Arbitrator, Presiding Chairperson

2/10/05
Signature Date

William R. Alheim
Public Arbitrator

Signature Date

Benham Fuhrman, CFP
Non-Public Arbitrator

Signature Date

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 862.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 2,200.00
Forum Fees	= \$ 7,312.50
Total Fees	= \$ 9,512.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 4,312.50

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


ARBITRATION PANEL

Robert Weiner, Esq.	-	Public Arbitrator, Presiding Chairperson
William R. Alheim	-	Public Arbitrator
Benham Fuhrman, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert Weiner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


William R. Alheim
Public Arbitrator

2-10-08
Signature Date

Benham Fuhrman, CFP
Non-Public Arbitrator

Signature Date

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 7,312.50
Total Fees	= \$ 12,512.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 7,312.50

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

ARBITRATION PANEL

Robert Weiner, Esq.	-	Public Arbitrator, Presiding Chairperson
William R. Alheim	-	Public Arbitrator
Benham Fuhrman, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert Weiner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

William R. Alheim
Public Arbitrator

Signature Date

Benham Fuhrman
Benham Fuhrman, CFP
Non-Public Arbitrator

2/10/05
Signature Date

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