

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David Earl Cyphert (Claimant) v. Brian T. Petros and Merrill Lynch, Pierce, Fenner & Smith Incorporated, (Respondents)

Case Number: 03-05531

Hearing Site: Cleveland, Ohio

Nature of the Dispute: Customer v. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimant, David Earl Cyphert IRA ("Cyphert IRA") and David E. and Norma J. Cyphert ("Cypherts"), hereinafter collectively referred to as "Claimants": Roger Van Deusen, Esq., Van Deusen & Wagner, Cleveland, Ohio.

Respondent, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"): Harry D. Frisch, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith Incorporated, New York, NY.

Respondent, Brian T. Petros ("Petros"): Samuel E. Cohen, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

Merrill Lynch and Petros are hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed: July 28, 2003.

Claimants signed the Uniform Submission Agreement: July 20, 2003.

Joint Statement of Answer filed by Respondents: October 22, 2003.

Merrill Lynch did not sign the Uniform Submission Agreement.

Petros did not sign the Uniform Submission Agreement.

CASE SUMMARY

In their Statement of Claim, Claimants alleged the following: unsuitable investment recommendations; intentional and fraudulent misrepresentations; omission of material facts; churning; breach of fiduciary duties; fraud; gross negligence; breach of contract. Claimants' claims involved, but were not limited to, variable annuities.

In their Answer Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Pursuant to the Statement of Claim, Claimants requested the following damages: Compensatory Damages in the amount of \$161,264.00; attorneys' fees; and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety and requested that the Arbitration Panel issue an order directing that all references of this proceeding and the underlying complaint be expunged from the CRD records of Respondent Petros, that the cost of this proceeding be assessed against the Claimant, and that Respondents be awarded such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents and Claimants advise that on or about October 19, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties agreed that the Stipulated 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 entry of such an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

- 1) Pursuant to the confidential settlement agreement reached between all parties, all claims against Respondent Merrill Lynch and Respondent Petros are dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Brian T. Petros' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-90 and 99-54, Respondent Brian T. Petros must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) The Respondents will bear their own costs and expenses and any of Claimants' costs and expenses associated with the above-referenced arbitration, as determined by NASD-DR.
- 4) Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch, Pierce, Fenner and Smith Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

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:

Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Two (2) Pre-hearing conferences:	
February 27, 2004	1 session
December 15, 2004	1 session

Total Forum Fees	= \$ 2,250.00
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1. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. hereby is solely liable for:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$8,431.52</u>
Refund Due Merrill Lynch	= \$3,231.52

3. Respondents Merrill Lynch and Petros are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125.00
<u>Total Fees</u>	= \$1,125.00
<u>Less payments</u>	= \$1,125.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

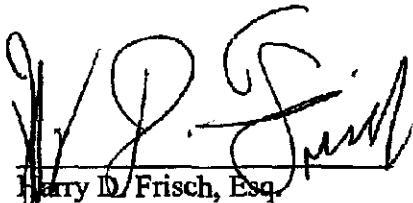
All balances are payable to NASD Dispute Resolution, Inc. and are due upon receipt pursuant to Rule 10330(g) of the Code.

Parties' Signatures



Roger Van Deusen, Esq.
Van Deusen & Wagner, LLC
For and on behalf of Claimants
David Earl Cyphert IRA and David
And Norma Cyphert.

Nov. 5, 2004
Signature Date



Harry D. Frisch, Esq.
Merrill Lynch, Pierce, Fenner & Smith Inc.
For and on behalf of Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

11/11/2004
Signature Date

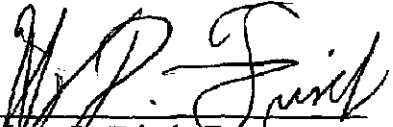
Samuel E. Cohen, Esq.
Marshall, Dennehey, Warner, Coleman & Goggin
For and on behalf of Respondent
Brian Petros

Signature Date


Parties' Signatures

Roger Van Deusen, Esq.
Van Deusen & Wagner, LLC
For and on behalf of Claimants
David Earl Cyphert IRA and David
And Norma Cyphert.

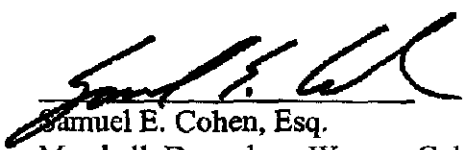
Signature Date



Harry D. Frisch, Esq.
Merrill Lynch, Pierce, Fenner & Smith Inc.
For and on behalf of Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.



Signature Date



Samuel E. Cohen, Esq.
Marshall, Dennehey, Warner, Coleman & Goggin
For and on behalf of Respondent
Brian Petros




Signature Date

ARBITRATION PANEL

Michael L. King, Esq.	-	Public Arbitrator, Chairperson
Elmer G. Cowan, Esq.	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Arbitrator's Signatures


Michael L. King, Esq.
Public Arbitrator, Chairperson

12/30/2004
Date

Elmer G. Cowan, Esq.
Public Arbitrator

Date

Bert Cliff
Non Public-Arbitrator

Date

January 7, 2005
Date of Service (For NASD office use only)


ARBITRATION PANEL

Michael L. King, Esq.	-	Public Arbitrator, Chairperson
Elmer G. Cowan, Esq.	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Arbitrator's Signatures

Michael L. King, Esq.
Public Arbitrator, Chairperson

Date



Elmer G. Cowan, Esq.
Public Arbitrator

Date

Bert Cliff
Non Public-Arbitrator

Date

January 7, 2005
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Elmer G. Cowan, Esq.	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Arbitrator's Signatures

Michael L. King, Esq.
Public Arbitrator, Chairperson

Date

Elmer G. Gowan, Esq.
Public Arbitrator

Date



Bert Cliff
Non Public Arbitrator

12-15-04
Date

January 7, 2005

Date of Service (For NASD office use only)