

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Judith Feinberg, Chester Feinberg and Chester Feinberg IRA (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Bogart (Respondents)

Case Number: 03-05914

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimants Judith Feinberg ("J. Feinberg"), Chester Feinberg ("C. Feinberg"), and Chester Feinberg IRA ("C. Feinberg IRA") hereinafter collectively referred to as "Claimants": Phillip D. Sever, Esq., Cohen & Malad, LLP, Indianapolis, IN. Previously represented by: Phillip D. Sever, Esq., The Sever Law Firm, Brecksville, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and John Bogart ("Bogart") hereinafter collectively referred to as "Respondents": Angela A. Turiano, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 2003.

Claimants signed the Uniform Submission Agreement: September 2, 2003.

Joint Statement of Answer filed by Respondents on or about: December 22, 2003.

Joint Amended Statement of Answer filed by Respondents on or about: February 26, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: February 25, 2004.

Respondent Bogart signed the Uniform Submission Agreement on: February 26, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: (i) unsuitability; (ii) constructive fraud; (iii) breach of fiduciary duty; and (iv) failure to supervise. Claimants' claims involved a variable annuity.

Unless specifically admitted in their Answer and Amended Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$60,000.00; compensatory damages in the amount of \$10,500.00 for disgorgement of Respondents' commissions and compensation; punitive damages; prejudgment and postjudgment interest; costs, including attorneys' fees and consulting fees; and other and further relief the Panel deems just and proper.

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

OTHER ISSUES CONSIDERED AND DECIDED

Respondents and Claimants advised NASD Dispute Resolution that on or about April 11, 2005, 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 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) Respondent Merrill Lynch is dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent John Bogert's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent John Bogert must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) By agreement of the parties, the parties shall share any outstanding costs and expenses associated with the above-referenced arbitration. All NASD Dispute Resolution fees and costs for this matter have been assessed as indicated below.

- 4) Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to 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 = \$225.00

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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$1,700.00

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:

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$750.00
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Pre-hearing conference: May 20, 2004	1 session
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Total Forum Fees	= \$750.00
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1. The Panel has assessed \$375.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$375.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Refund Due Claimants	= \$ 375.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$3,550.00
<u>Total Fees</u>	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

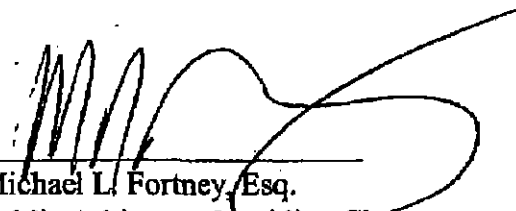
<u>Forum Fees</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

All balances are due and payable to NASD Dispute Resolution.

ARBITRATION PANEL

Michael L. Fortney, Esq.	-	Public Arbitrator, Presiding Chair
Kathleen Helbig	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael L. Fortney, Esq.
Public Arbitrator, Presiding Chair

2/29/06
Date

Kathleen Helbig
Public Arbitrator

Date

Bert Cliff
Non-Public Arbitrator

Date

February 24, 2006
Date of Service (For NASD office use only)


ARBITRATION PANEL

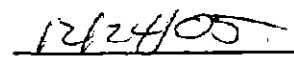
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Kathleen Helbig
Public Arbitrator

Date


Bert Cliff
Non-Public Arbitrator

2-23-06
Date

February 24, 2006
Date of Service (For NASD office use only)