
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Norman Bernard

Lynn Desantis Bernard

Case Number: 03-06020

Name of the Respondent

Merrill Lynch, Pierce, Fenner and Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Norman Bernard and Lynn Desantis Bernard, hereinafter collectively referred to as "Claimants": Martin A. Feigenbaum, Esq., Law Offices of Martin A. Feigenbaum, Miami, Florida.

For Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS"), hereinafter referred to as "Respondent": Neil S. Baritz, Esq., Baritz & Coleman, L.L.P., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 19, 2003.

Claimants signed the Uniform Submission Agreement: June 15, 2003.

Motion for More Definite Statement, Answer, Defense and Motion to Strike filed by Respondent on or about: November 14, 2003.

Respondent signed the Uniform Submission Agreement: October 7, 2003.

Claimants' Response to Motion for More Definite Statement and Motion to Strike filed on or about: February 23, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; unsuitability; and, breach of fiduciary. The causes of action relate to the purchase and sale of various securities in Claimants' accounts including, but not limited to, AOL, Ciena, CMGI, Comtech, Cree, Juniper, Qualcomm, Raytheon, Yahoo, Nortel Networks and JDS Uniphase.

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

RELIEF REQUESTED

Claimants requested unspecified compensatory damages, interest, costs, attorneys' fees, and any further relief deemed just and proper by the Panel.

Respondent requested a dismissal of this action in its entirety, the assessment of all costs, forum and processing fees against Claimants, and such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 16, 2004, the Panel issued an order which granted Respondent's Motion for More Definite Statement of Claim and directed Claimants to file a clarification, identifying any individual transactions on or before April 14, 2004. Additionally, the Panel denied Respondent's Motion to Strike. On or about April 19, 2004, Claimants filed with NASD Dispute Resolution Claimants' Clarification Re: Unauthorized Trades.

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 and 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 for lack of authorization and unsuitability. Respondent shall pay to Claimants compensatory damages in the amount of \$112,000.00 plus interest at a rate of 4% per annum, accruing from October 1, 2001 until the date of payment of the Award.

Respondent is liable and shall pay to Claimants' the sum of \$250.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

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

FEES

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 = \$ 250.00

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. Accordingly, MLPFS is a member firm and a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 7-10, 2003 Adjournment requested by Respondent. \$1,000.00

The panel waived the total postponement fee of \$1,000.00.

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 Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: March 16, 2004 1 session	
Eight (8) Hearing sessions @ \$1,000.00/session	= \$8,000.00
Hearing Dates: January 18, 2005 2 sessions	
January 19, 2005 2 sessions	
January 20, 2005 2 sessions	
January 21, 2005 2 sessions	
Total Forum Fees	= \$9,000.00

The Panel has assessed forum fees of \$4,500.00 to Claimants, jointly and severally.

The Panel has assessed forum fees of \$4,500.00 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 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	= \$ 250.00
Forum Fees	= \$4,500.00
Total Fees	= \$4,750.00
Less payments	= \$1,235.00
Balance Due NASD Dispute Resolution	= \$3,515.00

Respondent is solely liable for:

Member Fees	= \$4,450.00
Forum Fees	= \$4,500.00
Total Fees	= \$8,950.00
Less payments	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$4,500.00

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
Paul Burlant	-	Public Arbitrator
Alan Hart Moore	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Robert Weiner, Esq.
Public Arbitrator, Presiding Chairperson

January 28, 2005
Signature Date

/s/
Paul Burlant
Public Arbitrator

January 28, 2005
Signature Date

/s/
Alan Hart Moore
Non-Public Arbitrator

January 26, 2005
Signature Date

January 31, 2005
Date of Service (For NASD Dispute Resolution office use only)

JAN. 28. 2005 9:54AM NASD

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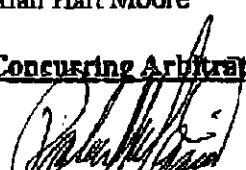
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Robert Weiner, Esq.
Public Arbitrator, Presiding Chairperson

1/28/05
Signature Date

Paul Burlant
Public Arbitrator

Signature Date

Alan Hart More
Non-Public Arbitrator

Signature Date

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

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Public Arbitrator, Presiding Chairperson

Signature Date

Paul Burlant
Public Arbitrator

Signature Date

Alan Hart More
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution

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Robert Weiner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Paul Burlant
Public Arbitrator

Signature Date

Alan Hart Moore
Alan Hart Moore
Non-Public Arbitrator

1/26/05
Signature Date

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