

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Harry Maxwell
John Maxwell

Case Number: 03-06026

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Jeanne Eisele

Hearing Site: Philadelphia, PA

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

REPRESENTATION OF PARTIES

Claimants, Harry Maxwell and Joan Maxwell, hereinafter collectively referred to as "Claimants", were represented by Richard De Vita, Esq., De Vita & Associates, Hoboken, New Jersey.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Jeanne Eisele ("Eisele"), hereinafter collectively referred to as "Respondents", were represented by Hugo A. Hilgendorff, IV, Esq., Bressler, Amery & Ross, P.C., Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed on August 15, 2003.

Claimants signed the Uniform Submission Agreement on July 15, 2003.

Statement of Answer filed by Respondents on January 5, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on October 24, 2003.

Respondent Eisele signed the Uniform Submission Agreement on April 29, 2004.

CASE SUMMARY

Claimants asserted the following causes of action in their Statement of Claim, among others: suitability, misrepresentation, fraud, breach of fiduciary duty, violation of NASD rules, and violations of the New Jersey Uniform Securities Act. The causes of action relate to the purchase and sale of various mutual funds and annuities, including: Federated Utility, Seligman Communications and Information, Alliance Growth, Alliance Growth & Income, Federated Equity Income, Federated World Utility, MunderNetNet, Teleglobal 2000, Broadband Port 2000, ML Fundamental Growth, Fidelity Overseas, Alliance Technology, MFS New Discovery, AIM International, Scudder Growth & Income, Dreyfus Appreciation, ML Special Value, Nations Marsico Growth & Income, AIM Value, Alliance Growth, MFS Research, ML Value Focus, ML Global Growth, ML High Income, and ML Index 500.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimants' claims are barred by the doctrines of laches, waiver, ratification and estoppel; the Statement of Claim is barred by the Statute of Limitations; and failure to mitigate damages.

RELIEF REQUESTED

Claimants requested the following damages:

Compensatory Damages	amount unspecified
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified

Respondents requested that Claimants' Statement of Claim be dismissed, that the Arbitration Panel (the "Panel") enter an order expunging all references to this claim from Respondent Eisele's registration records maintained by the Central Registration Depository ("CRD"), and that the Panel award Respondents costs and such other further relief as they deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the Parties fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

AWARD

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The listed parties have amenablely resolved their differences and have requested this Stipulated Award;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Eisele's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Eisele 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 attorneys' fees, except as Fees are specifically addressed below; and

4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is 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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$ 450	= \$ 900.00
Pre-hearing conferences: July 13, 2004 1 session	
November 23, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,000	= \$ 1,000.00
<u>Pre-hearing conference: April 26, 2004 1 session</u>	<u>= \$ 1,900.00</u>
Total Forum Fees	= \$ 1,900.00

1. The Panel has assessed \$ 950.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 950.00 of the forum fees jointly and severally to Respondents.

EEE SUMMARY

Claimants, Harry Maxwell and Joan Maxwell, are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$ 950.00</u>
Total Fees	= \$ 1,200.00

Less payments	= \$ 250.00
Balance Due NASD Dispute Resolution	= \$ 950.00

Respondent, Merrill Lynch, is assessed and shall pay:

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondents, Merrill Lynch and Eisele, are jointly and severally assessed and shall pay:

Forum Fees	= \$ 950.00
Total Fees	= \$ 950.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 950.00

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

ARBITRATION PANEL

Howard A. Finkelman, Esq.	-	Public Arbitrator, Presiding Chairperson
Joseph Straus, Jr.	-	Public Arbitrator, Panelist
Lewis R. Jaffe	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Howard A. Finkelman
Howard A. Finkelman, Esq.
Public Arbitrator, Presiding Chairperson

2/8/05
Signature Date

Joseph Straus, Jr.
Public Arbitrator, Panelist

Signature Date

Lewis R. Jaffe
Non-Public Arbitrator, Panelist

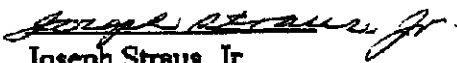
Signature Date

February 12, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Howard A. Finkelman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Joseph Straus, Jr.
Public Arbitrator, Panelist

2/7/05
Signature Date

Lewis R. Jaffe
Non-Public Arbitrator, Panelist

Signature Date

February 12, 2005
Date of Service (For NASD Dispute Resolution office use only)

Supplemental Award Form 5

Concurring Arbitrators' signatures

Howard A. Finkelman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Joseph Strans, Jr.
Public Arbitrator, Panelist

Signature Date

Lewis R. Jaffe
Lewis R. Jaffe
Non-Public Arbitrator, Panelist

2-7-05
Signature Date

February 12, 2005
Date of Service (For NASD Dispute Resolution office use only)