

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Stuart Hirsch, M.D.
Ellin R. Hirsch

Case Number: 03-06158

Name of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Alane Siem
Jay Siem
Merrill Lynch & Co., Inc.

Hearing Site: Philadelphia, PA

Nature of the Dispute: Customers vs. Member, Associated Persons, and Non-Member

REPRESENTATION OF PARTIES

Claimants, Stuart Hirsch, M.D. and Ellin R. Hirsch, hereinafter collectively referred to as "Claimants", were represented by Theodore H. Jobes, Esq., Fox & Rothschild, LLP, Philadelphia, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Alane Siem ("A. Siem"), Jay Siem ("J. Siem"), and Merrill Lynch & Co., Inc. ("Merrill & Co."), hereinafter collectively referred to as "Respondents", were represented at the hearing by John J. Murphy, III, Esq. and Marianne Johnston, Esq., Stradley Ronon Stevens & Young, LLP, Cherry Hill, New Jersey.

CASE INFORMATION

Statement of Claim filed on: August 22, 2003.

Claimants signed the Uniform Submission Agreement on: July 14, 2003.

Statement of Answer filed by Respondents on: December 15, 2003.

Respondents did not file signed Uniform Submission Agreements.

CASE SUMMARY

Claimants in their Statement of Claim asserted the following causes of action, among others: violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; violation of Section 15 of the Securities Act of 1933 and Section 20(a) of the Securities Exchange Act of 1934; violations of the Pennsylvania Securities Act of 1972; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; fraud; negligent misrepresentations; breach of fiduciary duty; breach of contract; negligence; failure to supervise; and respondeat superior. The causes of action relate to unspecified municipal bond

funds, common stock, corporate stock, and mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; statutes of limitations; Claimants' claims are barred by the doctrines of waiver, ratification and estoppel; failure to mitigate damages; and any damages sustained were caused by market conditions.

RELIEF REQUESTED

Claimants in their Statement of Claim requested compensatory damages in the amount of six-hundred and seventy-eight thousand dollars and no cents (\$678,000.00), interest, punitive damages in the amount of two-million and thirty-four thousand dollars and no cents (\$2,034,000.00), treble damages, attorneys' fees, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Merrill Lynch, A. Siem, J. Siem and Merrill & Co. did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

Prior to the commencement of the hearings on the merits, Claimants informed the Panel that they had dismissed all claims against Respondent A. Siem.

The parties have 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, 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:

1. Claimants' claims are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Alane Siem and Respondent Jay Siem'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, Respondents A. Siem and J. Siem must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All claims for punitive damages, treble damages, and attorneys' fees are denied in their entirety;

4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
5. Any and all relief not specifically addressed herein 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	= \$ 600.00
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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 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	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
<hr/> Total Member Fees	<hr/> = \$ 8,550.00

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:

One (1) Pre-hearing session with Panel @ \$ 1,200.00	= \$ 1,200.00
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Pre-hearing conferences:	March 15, 2004	1 session
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Six (6) Hearing sessions @ \$ 1,200.00	= \$ 7,200.00
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Hearing Dates:	July 28, 2004	2 sessions
	July 29, 2004	2 sessions
	July 30, 2004	2 sessions

<hr/> Total Forum Fees	<hr/> = \$ 8,400.00
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1. The Panel has assessed \$ 4,200.00 of the forum fees to Claimants.
2. The Panel has assessed \$ 4,200.00 of the forum fees jointly and severally to Respondents Merrill Lynch, J. Siem, and Merrill & Co.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 600.00
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Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

2. Respondent, Merrill Lynch, is assessed and shall pay the following fees:

Member Fees	= \$ 8,550.00
Total Fees	= \$8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents, Merrill Lynch, J. Siem, and Merrill & Co. are jointly and severally assessed the following fees:

Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,200.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

ARBITRATION PANEL

Walter R. Milbourne, Esq.	-	Public Arbitrator, Presiding Chairperson
Evelyn Boss Cogan, J.D.	-	Public Arbitrator, Panelist
Felix A. Meschini, Jr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Walter R. Milbourne

Walter R. Milbourne, Esq.
Public Arbitrator, Presiding Chairperson

Aug. 2, 2004
Signature Date

Evelyn Boss Cogan, J.D.
Public Arbitrator, Panelist

Signature Date

Felix A. Meschini, Jr.
Non-Public Arbitrator, Panelist


Signature Date

August 6, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Walter R. Milbourne, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Evelyn Boss Cogan, J.D.
Public Arbitrator, Panelist

8/5/04

Signature Date

Felix A. Meschini, Jr.
Non-Public Arbitrator, Panelist

Signature Date

August 6, 2004

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

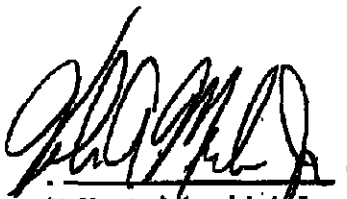
Concurring Arbitrators' Signatures

Walter R. Milbourne, Esq.
Public Arbitrator, Presiding Chairperson

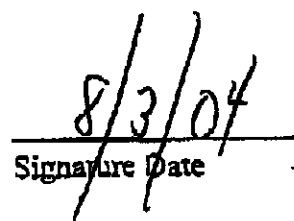
Signature Date

Melvyn Boss Cogan, J.D.
Public Arbitrator, Panelist

Signature Date



Felix A. Meschini, Jr.
Non-Public Arbitrator, Panelist


Signature Date

August 6, 2004
Date of Service (For NASD Dispute Resolution office use only)