

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Borselli Living Trust dtd 10/20/2000, Kathleen Borselli, and Agostino Borselli, Claimants v.
Merrill Lynch, Pierce, Fenner & Smith Inc., Edward J. Hogan, III, and Raymond E. Tate,
Respondents

Case Number: 03-06202

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Timothy A. Canning, Esq.
Novato, California

For Respondents:

Daniel G. Murphy, Esq.
Negin Mirmirani, Esq.
Loeb & Loeb LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 22, 2003

Claimants' Joint Uniform Submission Agreement signed: August 3, 2003

Joint Statement of Answer filed by Respondents: November 5, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.'s Uniform Submission Agreement signed:
October 15, 2003

Respondent Edward J. Hogan, III's Uniform Submission Agreement signed: November 11, 2003

Respondent Raymond E. Tate's Uniform Submission Agreement signed: November 11, 2003

CASE SUMMARY

Claimants alleged fraud, negligence, breach of contract, breach of fiduciary duty, misrepresentations, unsuitability, and failure to supervise, involving various unspecified securities.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$182,000.00 in compensatory damages, unspecified interest, unspecified punitive damages, lost income, costs, including attorney's fees, and disciplinary referrals.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On September 15, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On August 4, 2004, Respondents Edward J. Hogan, III and Raymond E. Tate filed a Motion to Dismiss. On August 11, 2004, Claimants filed an opposition to the motion. On August 18, 2004, the Panel and parties held a telephonic pre-hearing conference to hear oral argument on the motion. After due deliberation, the Panel denied Respondents Edward J. Hogan, III and Raymond E. Tate's Motion to Dismiss.

After Claimants' case-in-chief, Respondents Edward J. Hogan, III and Raymond E. Tate renewed their Motion to Dismiss. After due deliberation, the Panel granted the motion as to Respondent Raymond E. Tate only. Respondent Edward J. Hogan, III was not dismissed.

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, testimony, and evidence presented at the hearing, the Panel 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 Respondent Raymond E. Tate's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Raymond E. Tate 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 attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial Claim Filing Fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Inc. is a party and the following fees are assessed:

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

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or Panel. The following fees are assessed:

1 Pre-hearing conference session with the chairperson @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: August 18, 2004 1 session	
2 Pre-hearing conference sessions @ \$ 1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: April 22, 2004 1 session	
August 18, 2004 1 session	
5 Hearing sessions @ \$ 1,125.00/session	= \$ 5,625.00
Hearings: September 20, 2004 2 sessions	
September 21, 2004 2 sessions	
September 28, 2004 1 session	
Total Forum Fees	= \$ 8,325.00

1. The Panel assessed \$4,162.50 of the forum fees jointly and severally to Claimants Borselli Living Trust dtd 10/20/2000, Kathleen Borselli, and Agostino Borselli.
2. The Panel assessed \$4,162.50 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith Inc., Edward J. Hogan, III, and Raymond E. Tate.

FEE SUMMARY

1. Claimants Borselli Living Trust dtd 10/20/2000, Kathleen Borselli, and Agostino Borselli are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,162.50
Total Fees	= \$ 4,462.50
Less payments	= \$ (1,425.00)
Balance Due NASD Dispute Resolution	= \$ 3,037.50

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith Inc., Edward J. Hogan, III, and Raymond E. Tate are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 4,162.50
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 4,162.50

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

ARBITRATION PANEL

Allan Brotsky	-	Public Arbitrator, Presiding Chair
Fred D. Butler	-	Public Arbitrator
John T. Hyland	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Allan Brotsky
Chair, Public Arbitrator

Signature Date

Fred D. Butler
Public Arbitrator

Signature Date

John T. Hyland
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

Allan Brotsky	-	Public Arbitrator, Presiding Chair
Fred D. Butler	-	Public Arbitrator
John T. Hyland	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Allan Brotsky
Allan Brotsky
Chair, Public Arbitrator

9-29-04
Signature Date

Fred D. Butler
Fred D. Butler
Public Arbitrator

Signature Date

John T. Hyland
John T. Hyland
Non-Public Arbitrator

Signature Date

9/30/04
Date of Service

ARBITRATION PANEL

Allan Brotsky	-	Public Arbitrator, Presiding Chair
Fred D. Butler	-	Public Arbitrator
John T. Hyland	-	Non-Public Arbitrator

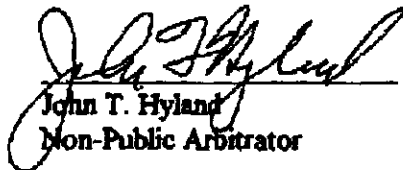
Concurring Arbitrators' Signatures

Allan Brotsky
Chair, Public Arbitrator

Signature Date

Fred D. Butler
Public Arbitrator

Signature Date



John T. Hyland
Non-Public Arbitrator

9-29-04
Signature Date

9/30/04
Date of Service

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Fred D. Butler	-	Public Arbitrator
John T. Hyland	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Allan Brotsky
Chair, Public Arbitrator

Signature Date


Fred D. Butler
Public Arbitrator

10/14/04
Signature Date

John T. Hyland
Non-Public Arbitrator

Signature Date

10/4/04
Date of Service