
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Central Brevard Radiology SEP FBO
Jeffery S. Araj

Case Number: 03-06245

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Terry Tolbert
Phua Young
James D. McCall

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Central Brevard Radiology SEP FBO Jeffrey S. Araj, hereinafter referred to as "Claimant": Howard N. Kahn, Esq., Law Offices of Kahn & Chenkin, Hollywood, Florida.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Terry Tolbert ("Tolbert"): S. Lawrence Polk, Esq. and Bradley J. Cline, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

For Respondent Phua Young ("Young"): Edward J.M. Little, Esq., Christopher M. Wilson, Esq. and Vicki F. Andreadis, Esq., Hughes Hubbard & Reed, LLP, New York, New York.

Respondent James D. McCall ("McCall") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2003.

Claimant signed the Uniform Submission Agreement on: August 17, 2003.

Statement of Answer filed by Respondents Merrill and Tolbert on or about: January 15, 2004.

Statement of Answer filed by Respondent Young on or about: January 28, 2004.

Respondent Tolbert signed the Uniform Submission Agreement: December 12, 2003.

Respondent Merrill signed the Uniform Submission Agreement on: December 12, 2003.

Respondent Young signed the Uniform Submission Agreement on: October 15, 2003.

Respondent McCall did not submit an executed Uniform Submission Agreement.

Respondent McCall did not submit a Statement of Answer.

CASE SUMMARY

The causes of action relate to allegations that Respondents Merrill and Tolbert failed to disclose material facts with regard to investment recommendations for Claimant's simplified employee pension account, that Respondent Young failed to disclose material facts in his research reports relating to certain securities purchased by Claimant, and that Respondent McCall breached his fiduciary duties allegedly owed to Claimant in his capacity as the manager of a mutual fund, shares of which were purchased by Claimant. Claimant asserted claims for fraud, breach of fiduciary duty in recommending unsuitable investments, and failure to disclose material facts. The causes of action relate to the purchase in Claimants' account of various technology stocks and mutual funds, including but not limited to, Tyco.

Respondents Merrill, Tolbert and Young denied all allegations of wrongdoing and asserted the following defenses: all trades were suitable and authorized by Claimant; no misrepresentations were made to Claimant, whether through research reports or otherwise; and, Claimant's claims are barred by ratification, setoff, waiver and estoppel.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$75,000.00; 2) pre and post judgment interest; 3) costs; 4) punitive damages; and, 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents Merrill and Tolbert requested: 1) an award rejecting the Statement of Claim in its entirety; 2) that all forum fees and costs be assessed against Claimant; 3) that the NASD Central Registration Depository ("CRD") file of Respondent Tolbert be expunged of any reference to this claim; and, 4) grant Respondent Merrill such other, further and different relief as this Panel deemed just and proper.

Respondent Young requested: 1) an award rejecting Claimant's Statement of Claim in its entirety; 2) an award directing that Young's NASD CRD file be expunged of any reference to this claim; 3) assessing all forum fees and costs against Claimant; 4) award Respondent Young his reasonable attorneys' fees; and, 5) granting other relief deemed reasonable by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent McCall did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and is bound by the determination of the Panel on all issues submitted.

On or about January 28, 2005, the Claimant notified NASD Dispute Resolution that the parties had settled this arbitration proceeding.

On or about April 1, 2005, Respondent Merrill filed with NASD Dispute Resolution an agreed upon proposed Stipulated Award for execution by the Panel.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant has dismissed his claims against Respondent Merrill, Respondent Tolbert, Respondent Young, and Respondent McCall with prejudice, and requests entry of this Stipulated Award.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Tolbert's and Young's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Tolbert and Young 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.
4. Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$225.00
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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:

The Panel has assessed a three-day cancellation fee of \$300.00 as follows:

\$150.00 to Claimant; and,
\$150.00 to Respondents, jointly and severally.

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.

There were no injunctive relief fees assessed during these proceedings.

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 @ \$750.00 per session	= \$ 750.00
Pre-hearing conference: May 4, 2004	1 session

Total Forum Fees	= \$ 750.00
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The Panel has assessed forum fees of \$375.00 to Claimant.

The Panel has assessed forum fees of \$375.00 to Respondents Merrill, Tolbert, Young and McCall, jointly and severally.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Forum Fees	= \$ 375.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 375.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Initial Claim Filing Fee</u>	<u>= \$ 225.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondent Merrill is solely liable for:

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

Respondents Merrill, Tolbert, Young and McCall are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 375.00
Total Fees	= \$ 525.00
<u>Less payments</u>	= \$ 525.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

<i>William J. Capito, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Richard C. Murphy, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Jerrold E. Slutzky, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
William J. Capito, Esq.
Public Arbitrator, Presiding Chairperson

6/02/2005
Signature Date

[I concur in the stipulated award. I do decline to join into the stipulated recommendation for expungement as I have not heard evidence on the same. However, I do not oppose the entry of the expungement recommendation].

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/s/

Richard C. Murphy, Esq.
Public Arbitrator

5/02/2005

Signature Date

/s/

Jerrold E. Slutzky, Esq.
Non-Public Arbitrator

4/29/2005

Signature Date

6/07/2005

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

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Arbitration No. 03-06245
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Fee Summary

Claimant is solely liable for:

Forum Fees	= \$ 375.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 375.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Initial Claim Filing Fee</u>	= \$ 225.00
Total Fees	= \$1,125.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondent Merrill is solely liable for:

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

Respondents Merrill, Tolbert, Young and McCall are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 375.00
Total Fees	= \$ 525.00
<u>Less payments</u>	= \$ 525.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

William J. Capito, Esq.

Richard C. Murphy, Esq.

Jerrold E. Slutzky, Esq.

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures



William J. Capito, Esq.

Public Arbitrator, Presiding Chairperson

6-2-05

Signature Date

[I concur in the stipulated award. I do decline to join into the stipulated recommendation for expungement as I have not heard evidence on the same. However, I do not oppose the entry of the expungement recommendation].

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Arbitration No. 03-06243
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Fee Summary

Claimant is solely liable for:

Forum Fees	= \$ 375.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 375.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Initial Claim Filing Fee</u>	<u>= \$ 225.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondent Merrill is solely liable for:

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

Respondents Merrill, Tolbert, Young and McCall are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 525.00
<u>Less payments</u>	<u>= \$ 525.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

William J. Capito, Esq.

Richard C. Murphy, Esq.

Jerrold E. Slutzky, Esq.

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

William J. Capito, Esq.

Public Arbitrator, Presiding Chairperson



Richard C. Murphy, Esq.
Public Arbitrator

Signature Date

MAY -- 2 2005

Signature Date


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Jerrold E. Slutzky, Esq.
Non-Public Arbitrator



Signature Date

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