

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of Claimant
Robert J. Dartez

Case Number: 03-06288

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Robert Ewing, IV
Randy Kirby

Hearing Site: New Orleans, Louisiana

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

REPRESENTATION OF PARTIES

For Robert J. Dartez hereinafter referred to as "Claimant": Samuel David Abraham, Esq., Lafayette, Louisiana

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("ML"), Robert Ewing, IV ("Ewing"), and Randy Kirby ("Kirby"), hereinafter collectively referred to as "Respondents": George C. Freeman, III, Esq. and Meredith A. Cunningham, Esq., Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed on or about: August 29, 2003.

Claimant signed the Uniform Submission Agreement on or about: August 20, 2003.

Answer filed by Respondents on or about: November 17, 2003.

Respondent ML signed the Uniform Submission Agreement on December 15, 2003.

Respondent Kirby signed the Uniform Submission Agreement on December 16, 2003.

Respondent Ewing signed the Uniform Submission Agreement on December 15, 2003.

Motion to Supplement Statement of Claim filed on or about: April 22, 2004.

Respondents' Objection to Claimant's Motion to Amend Statement of Claim filed on or about: May 13, 2004.

Reply Brief in to Opposition to Claimant's Motion to Supplement the Statement of Claim filed by Respondents on or about: June 2, 2004.

Answer to Claimant's Supplemental Statement of Claim filed on or about: July 7, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; fraud; unauthorized trading; breach of fiduciary duty; and, failure to supervise.

Respondents denied the claims in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory and actual damages in an amount exceeding \$300,000.00; 2) the gains made and lost; 3) interest thereon from 1999 to the present or alternatively; 4) well-managed portfolio damages; 5) return of all fees, commissions and or charges imposed upon or charged against Claimant's investment funds by ML from 1999 to the present; 6) reimbursement of all costs and fees; 7) attorneys' fees in pursuing this action; and 8) punitive damages in an amount judged by this Panel to punish Respondents and to deter future conduct of this sort.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs, and, 3) other relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel granted Claimant's Motion to Supplement the Statement of Claim in its order dated May 25, 2004.

Claimant and Respondents entered into a confidential settlement agreement. In connection with that agreement, Claimant dismissed all claims against Respondents with prejudice.

The parties submitted a Joint Motion to enter a Stipulated Award including a request for expungement of the NASD Central Registration Depository ("CRD") record of Respondent Kirby on or about August 28, 2006. On or about September 22, 2006 the Panel issued an order setting a hearing on the Joint Motion for Expungement.

Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

On or about October 16, 2006, the Panel heard oral argument regarding the expungement of the CRD record of Respondent Kirby.

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

The Panel has decided in full and final resolution of the issues submitted for determination as follows:

- (1) Claimant's claims are hereby denied and dismissed with prejudice;
- (2) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Kirby's registration records maintained by the NASD CRD on the basis that Respondent Kirby was not involved in the alleged investment-related sales-practice and failure to supervise violations, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Kirby must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- (3) Each party shall bear its own costs and expenses associated with the above-referenced arbitration, including attorneys' fees, except as fees are specifically addressed below;
- (4) Any and all relief not specifically addressed herein is 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	=\$ 300.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is ML.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

The December 13 – 16, 2004 adjournment was requested by Claimant.

The Panel has assessed an adjournment fee of \$1,125.00 to Claimant.

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:

There were no three-day cancellation fees assessed during these proceedings.

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 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 one arbitrator @ \$450.00/session = \$ 450.00

Pre-hearing conference: September 2, 2004 1 session

Four (4) Pre-hearing sessions with Panel @ \$1,125.00/session = \$4,500.00

Pre-hearing conferences: January 20, 2004 1 session

November 1, 2004 1 session

March 24, 2005 1 session

October 16, 2006 1 session

Total Forum Fees = \$4,950.00

The Panel has assessed \$ 3,037.50 of the forum fees to Claimant.

The Panel has assessed \$ 1,912.50 of the forum fees to Respondent ML.

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:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$3,037.50
Total Fees	= \$4,462.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$3,037.50

Respondent ML is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$1,912.50
Total Fees	= \$7,112.50
Less payments	= \$6,325.00
Balance Due NASD Dispute Resolution	= \$ 787.50

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

ARBITRATION PANEL

Ashley Belleau, Esq.	-	Public Arbitrator, Presiding Chairperson
Charles Reasonover, Esq.	-	Public Arbitrator
Dale A. Kaliszeski	-	Industry Arbitrator

Concurring Arbitrators' Signatures

/s/
Ashley Belleau, Esq.
Public Arbitrator, Presiding Chairperson

October 23 2006
Signature Date

/s/
Charles Reasonover, Esq.
Public Arbitrator

October 23 2006
Signature Date

/s/
Dale A. Kaliszeski
Industry Arbitrator

October 23, 2006
Signature Date

October 24, 2006
Date of Service (For NASD Dispute Resolution use only)

There were no administrative costs incurred during these proceedings.

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Concurring Arbitrators' Signatures



Ashley Belleau, Esq.
Public Arbitrator, Presiding Chairperson

10-23-06

Signature Date

Charles Reasonover, Esq.
Public Arbitrator

Signature Date

Dale A. Kaliszkeski
Industry Arbitrator

Signature Date

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Ashley Belleau, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Charles Reasonover, Esq.
Public Arbitrator

10/23/06

Signature Date

Dale A. Kaliszeski
Industry Arbitrator

Signature Date

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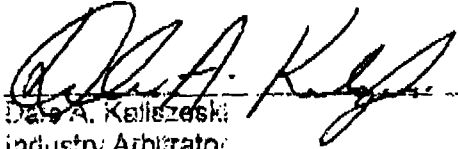
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Ashley Belleau, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Charles Reasonover, Esq.
Public Arbitrator

Signature Date


Dale A. Kaliszewski
Industry Arbitrator

12/23/06
Signature Date