

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jacqueline Macklin (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 03-06560

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant Jacqueline Macklin ("Macklin") hereinafter referred to as "Claimant" appeared *pro se*.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Respondent": John C. Kelly, Esq., McCarter & English, LLP, Newark, NJ.

CASE INFORMATION

Statement of Claim filed on or about: September 9, 2003.

Claimant signed the Uniform Submission Agreement: September 30, 2003.

Motion to Dismiss Ineligible Claims, Statement of Answer, and Defenses filed by Respondent on or about: December 30, 2003.

Respondent signed the Uniform Submission Agreement: November 6, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: ignorance of cause of action due to fraud; negligent handling of account; and failure to credit account and provide account statements. The causes of action relate to shares of Microsoft.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$90,480.00; punitive damages in the amount of \$271,440.00; forum fees in the amount of \$1,500.00; other case-related costs in the amount of \$5,000.00; and credit the account.

Respondent requested that the Panel dismiss with prejudice Claimant's claims in their entirety as ineligible pursuant to NASD Code Section 10304, order that Joseph Coniglio's CRD records be expunged of all reference to this matter, that all forum fees and costs be assessed against Claimant, and that the Panel award Respondent such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent made a motion to dismiss the Statement of Claim. On or about April 20, 2004, Claimant responded to the motion. A telephonic pre-hearing conference was held on December 3, 2004 to address the motion to dismiss. After reviewing the pleadings and papers submitted, and hearing the arguments of both parties, the Panel has granted Respondent's motion to dismiss. Therefore, this matter is dismissed with prejudice.

AWARD

After considering the pleadings, and the testimony and evidence presented at the pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant are dismissed in their entirety, with prejudice.
2. Any and all relief requests not specifically addressed herein, including punitive damages and expungement, are denied.

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	= Waived
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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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 @ \$1,125.00	= \$1,125.00
<u>Pre-hearing conference: December 3, 2004 1 session</u>	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:	
<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50
3. Respondent is solely liable for:	
Member Fees	= \$2,450.00
<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$3,012.50
<u>Less payments</u>	= \$2,450.00
Balance Due NASD Dispute Resolution	= \$ 562.50

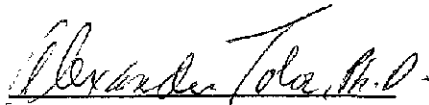
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

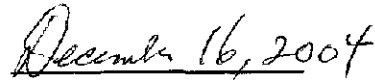
Alexander Tolor, Ph.D	-	Public Arbitrator, Presiding Chairperson
Eric P. Nachman, Esq.	-	Public Arbitrator
Birgitta K. Siegel, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Alexander Tolor, Ph.D
Public Arbitrator, Presiding Chairperson



Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date

Birgitta K. Siegel, Esq.
Non-Public Arbitrator

Signature Date

December 28, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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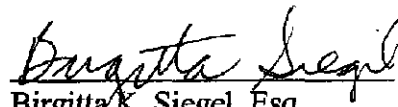
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