

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Jerrold and Lydia Cohan, Howard Cohan, ,
Helene and Scott Wineberg,
Marnie Wineberg and Hayley Wineberg

and

03-07106
Chicago, Illinois

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.,
Menard Sanford Schwartz and
Steven S. LaPorta

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

REPRESENTATION OF PARTIES

Jerrold and Lydia Cohan, Howard Cohan, Helene and Scott Wineberg, Marnie Wineberg and Hayley Wineberg ("Claimants") were represented by Andrew J. Stoltmann, Stoltmann Law Offices, Chicago, Illinois.

Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Menard Sanford Schwartz ("Schwartz") and Steven S. LaPorta ("LaPorta"), hereinafter collectively referred to as "Respondents," were represented by Alicia L. Downey, Esq., Bingham McCutchen LLP, Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about September 25, 2003. The Submission Agreement of Claimants was signed on or about April 7, 2004. The Amended Statement of Claim was filed on or about February 16, 2004.

The Statement of Answer was filed by Respondents on or about April 15, 2004. The Submission Agreements of Respondents Merrill Lynch, Schwartz, and Leporta were signed on or about April 15, 2004. The Answer to Amended Statement of Claim was filed by Respondents on or about October 8, 2004.

Helene Wineberg, Scott Wineberg, Marnie Wineberg, and Hayley Wineberg, formerly Claimants to this action, dismissed their claims with prejudice on or about February 4, 2005.

Edward Cohan, a former Claimant, also dismissed his claim on or about February 4, 2005, purportedly without prejudice, over Respondents' objection. Respondent filed their Opposition to Withdrawal of Claims without Prejudice on February 9, 2005, in which they assented to the withdrawal of Edward Cohan's claims but requested a ruling from the Panel, in accordance with Code of Arbitration Rule 10305, that such withdrawal was with prejudice.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitable investment recommendations; negligent account management; misrepresentations and omissions; undisclosed conflicts of interest in Merrill Lynch's research department; unauthorized trading; violation of Illinois Consumer Fraud and Deceptive Practices Act; fraud and misrepresentation; breach of contract; breach of fiduciary duty; violations of the Illinois Securities Law; failure to comply with NASD Conduct Rules 2310, 2110, 2120, and 3010; and negligence/negligent supervision.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses:

Claimants fail to state a claim upon which relief can be granted; Claimants suffered no damages resulting from any acts or omissions of the Respondents; Respondents are not liable to Claimants in any amount because, at all times relevant herein, Respondents acted properly and in good faith with respect to Claimants' account; under the terms of the customer agreements executed by Claimants, all substantive claims raised by Claimant with respect to their account are to be determined under New York law, which bars their claims under Illinois law or the law of any state other than New York; Claimants ratified Respondents' conduct with respect to each and every purchase or sale; all risks inherent in the investments at issue were fully disclosed and/or known to Claimants. Moreover, any losses incurred by Claimants were the direct result of adverse economic or market conditions and/or the acts of persons not under Respondents' control; Claimants failed to mitigate their damages; Claimants directed, approved and/or authorized each and every transaction for their account and/or ratified, accepted, acquiesced and confirmed in all respects such transactions. As such, Claimants' claims are barred by the equitable doctrines of estoppel, laches, ratification, and waiver; Claimants' allegations of securities fraud under federal and/or state law, including allegations the Merrill Lynch or its agents violated the Illinois Securities Laws, are barred by the applicable statutes of limitations; At all relevant times, Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees, and at all relevant times acted in

good faith and did not at any time, directly or indirectly, induce any act or acts constituting a violation or cause of action, thus, Merrill Lynch is not subject with to "control person" or *respondeat superior* liability; Claimants are not entitled to an award of attorneys' fees, punitive damages, interest or the costs of this proceeding; Claimants' alleged losses were proximately caused by their own conduct, negligence, comparative or contributory negligence, and therefore, Claimants are precluded from recovery.

RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of \$510,025.00; attorneys fees and costs of arbitration, including but not limited to expert witness fees, expenses and accounting fees as specifically authorized under the Illinois Securities Law of 1953; lost interest at the statutory rate of 10% annually, as authorized under the Illinois Securities Law of 1953; pre and post-award interest at the statutory rate; and punitive damages.

Respondents requested dismissal of the Statement of Claim in its entirety. In furtherance of the parties' resolution of this matter, the parties agree that the facts developed through discovery warrant an Order recommending expungement of the CRD registration records of Respondents Menard Sanford Schwartz and Steven LaPorta of all reference to these proceedings.

OTHER ISSUES CONSIDERED & DECIDED

The parties advised NASD Dispute Resolution that they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings and the stipulation of the parties, but without making any findings of fact or conclusions of law, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and find as follows:

1. The parties have agreed to settle this matter for a sum certain to be paid by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
2. Claimants' claims are hereby dismissed in their entirety with prejudice, and all other requests for relief are denied.

3. All parties are to bear their own attorneys' fees and costs, except Respondents shall pay any remaining amount due by Claimants to Joan Protes, Esq., in connection with the mediation of this dispute.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Menard Sanford Schwartz's and Respondent Steven LaPorta'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 Schwartz and LaPorta must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	\$ 375.00
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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. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith Inc.

Member surcharge	\$ 2,250.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	<u>\$ 4,000.00</u>
Member Fees	<u>\$ 7,000.00</u>

Adjournment Fees

Adjournments requested during these proceedings:

May 10-13 and 17-20, 2005, requested by Claimants and Respondents	<u>\$ 1,200.00</u>
Total Adjournment Fees	<u>\$ Waived</u>

Forum Fees and Assessments

~~THE ARBITRATION PANEL ASSESSES FORUM FEES FOR EACH HEARING SESSION CONDUCTED. A HEARING~~
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:

Two (2) Pre-hearing sessions with a single arbitrator	x \$ 450.00	\$ 900.00
Pre-hearing conferences: January 3, 2005	1 session	
January 31, 2005	1 session	
One (1) Pre-hearing session with Panel	x \$ 1,200.00	\$ 1,200.00
Pre-hearing conference: August 23, 2004	1 session	
Total Forum Fees		\$ 2,100.00

The Arbitration Panel has assessed \$1,050.00 of the forum fees jointly and severally to Claimants.

The Arbitration Panel has assessed \$1,050.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

Claimants shall be and hereby are jointly and severally liable for:

Initial Filing Fee	\$ 375.00
Forum Fees	\$ 1,050.00
Total Fees	\$ 1,425.00
Less Payments	\$ 1,575.00
Refund Due from NASD Dispute Resolution	\$ 150.00

Respondent, Merrill Lynch, shall be and hereby is liable for:

Member Fee	\$ 7,000.00
Total Fees	\$ 7,000.00
Less Payments	\$ 7,000.00
Balance Due NASD Dispute Resolution	\$ 0.00

Respondents shall be and hereby are jointly and severally liable for:

Forum Fees	\$ 1,050.00
Total Fees	\$ 1,050.00
Less Payments	\$ 0.00
Balance Due NASD Dispute Resolution	\$ 1,050.00

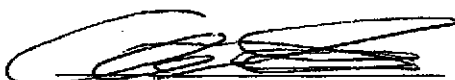
All balances are due to NASD Dispute Resolution

Parties' Signatures

By and through their undersigned counsel, the parties stipulate to the entry of this Stipulated Award.

Claimants Jerrold Cohan, Lydia Cohan and Howard Cohan

By their attorneys,



Andrew Stoltmann
Stoltmann Law Offices
10 South LaSalle Street, Suite 3300
Chicago, Illinois 60603-1002

8/25/05
Signature Date

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Menard Sanford Schwartz and Steven LaPorta

By their attorneys,

Alicia L. Downey
Bingham McCutchen LLC
150 Federal Street
Boston, MA 02110

Signature Date

ARBITRATION PANEL

Lynn Hirschfeld Brahin, Esq. - Public Arbitrator, Presiding Chair
Robert Lindner, Esq. - Public Arbitrator
Frank Samuelsohn - Non-Public Arbitrator

Parties' Signatures

By and through their undersigned counsel, the parties stipulate to the entry of this Stipulated Award.

Claimants Jerrold Cohan, Lydia Cohan and Howard Cohan


By their attorneys,

Andrew Stoltmann
Stoltmann Law Offices
10 South LaSalle Street, Suite 3300
Chicago, Illinois 60603-1002

Signature Date

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Menard Sanford Schwartz and Steven LaPorta

By their attorneys,


Alicia L. Downey
Bingham McCutchen LLC
150 Federal Street
Boston, MA 02110

10/27/05
Signature Date

ARBITRATION PANEL

Lynn Hirschfeld Brahlin, Esq. - Public Arbitrator, Presiding Chair
Robert Lindner, Esq. - Public Arbitrator
Frank Samuelsohn - Non-Public Arbitrator

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Concurring Arbitrators:

Lynn Hirschfeld Brahn
Lynn Hirschfeld Brahn, Esq.
Public Arbitrator, Presiding Chair

5/2/06
Signature Date

Robert Lindner, Esq.
Public Arbitrator

Signature Date

Frank Samuelsohn
Non-Public Arbitrator

Signature Date

8/1/06
Date of Service (For NASD office use only)

Concurring Arbitrators:

Lynn Hirschfeld Brahlin, Esq.
Public Arbitrator, Presiding Chair

Robert Lindner
Robert Lindner, Esq.
Public Arbitrator

Frank Samuelsohn
Non-Public Arbitrator

Signature Date

5/11/06
Signature Date

Signature Date

Date of Service (For NASD office use only)