
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Reed M. Pringle
Robin K. Pringle

Case Number: 04-00396

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith

Hearing Site: New Orleans, Louisiana

Name of the Third Party Respondent

David Vincent Liuzza

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

REPRESENTATION OF PARTIES

For Reed M. Pringle and Robin K. Pringle, hereinafter collectively referred to as "Claimants": Judy L. Burnthorn, Esq. and Brandi M. LaBruzzo, Esq., Deutsch, Kerrigan & Stiles, L.L.P., New Orleans, Louisiana.

For Respondent Merrill Lynch, Pierce, Fenner & Smith ("Merrill"): Meredith A. Cunningham, Esq., Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., New Orleans, Louisiana.

Third Party Respondent David Vincent Liuzza ("Liuzza") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: January 21, 2004.

Claimants signed the Uniform Submission Agreement: December 11, 2003.

Statement of Answer and Counterclaim filed by Respondent Merrill on or about: March 15, 2004.

Respondent Merrill signed the Uniform Submission Agreement: April 15, 2004.

Reply to Counterclaim filed by Claimants on or about: March 24, 2004.

Motion for Leave to file Third Party Demand filed by Respondent Merrill on or about: December 16, 2004.

Third Party Demand filed by Respondent Merrill on or about: February 4, 2005.

Third Party Respondent Liuzza did not file a response to the Third Party Demand or an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) fraud; 3) unsuitability; 4) misrepresentation and omission; 5) violations of §10 and Rule 10(b)5 of the Securities Exchange Act of 1934; 6) failure to supervise; 7) violation of NASD Conduct Rule 3010(a); 8) rescission; and, 9) forgery. The causes of action relate to the

purchase of unspecified securities products in Claimants' account and Claimants' investment in an unspecified restaurant venture using funds from Claimants' account.

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

Respondent Merrill asserted in its Counterclaim against Reed M. Pringle that Claimant wrongfully refused to submit his claims to arbitration.

Unless specifically admitted in their Answer, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Respondent Merrill asserted the causes of action of indemnification and contribution in its Third Party Demand against Third Party Respondent Liuzza.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of \$500,000.00; 2) interest of approximately \$245,000.00; 3) costs, expenses, and forum fees; 4) accounting; 5) attorney's fees; and, 6) unspecified damages for emotional distress.

Respondent Merrill requested: 1) dismissal of the Statement of Claim; 2) that all forum fees and costs be assessed against Claimants; and, 3) such other relief as is deemed just and proper. In its Counterclaim, Respondent Merrill requested: 1) judgment in the full amount of all damages; 2) attorney's fees; 3) costs and expenses; and, 4) interest.

In his response to the Counterclaim, Claimant Reed M. Pringle requested: 1) that the Counterclaim be dismissed with prejudice; 2) that all costs and forum fees be assessed against Respondent Merrill; and, 3) all further and other relief to which he may be entitled.

Respondent Merrill requested judgment against Third Party Respondent Liuzza for: 1) the full amount of damages found in this case; 2) attorney's fees; 3) costs; and, 4) interest.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 4, 2005, the undersigned arbitrators (the "Panel") entered an order which granted Respondent Merrill's Motion for Leave to File Third Party Demand.

During the evidentiary hearing, Respondent Merrill moved for dismissal of the Statement of Claim. Following argument of counsel, the Panel denied the motion.

During the evidentiary hearing, Claimants and Respondent Merrill agreed that the Panel would be paid a one session honorarium for conducting a deliberation session on July 13, 2006 and that the cost of said session would be assessed as a forum fee.

Third Party Respondent Liuzza attended only the first day of the evidentiary hearing on February 7, 2006 and no subsequent hearing sessions. The Panel determined that Third Party Respondent Liuzza received due notice of the hearing and that arbitration of the matter would proceed without said Respondent present, in accordance with the

NASD Code of Arbitration Procedure (the "Code").

Third Party Respondent Liuzza did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

The parties present at the conclusion of the hearing have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

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

Respondent Merrill is liable for inadequate supervision and shall pay to Claimant compensatory damages in the sum of \$114,865.00 plus interest in the amount of \$9,840.41.

Respondent Merrill is liable and shall pay to Claimant costs in the sum of \$33,662.58.

Respondent Merrill's Counterclaim is dismissed, with prejudice.

The Panel finds that Third Party Respondent Liuzza is liable to Respondent Merrill for full indemnification of the damages, interest, expenses, and NASD fees. It is ordered that Third Party Respondent Liuzza pay to Respondent Merrill the amount of awarded damages of \$114,865.00, interest of \$9,840.41, and expenses of \$33,662.58. In addition, Third Party Respondent Liuzza is liable to Respondent Merrill and shall pay to Respondent Merrill the sum of \$31,150.00 representing reimbursement of the Third Party claim filing fee of \$1,000.00 previously paid to NASD Dispute Resolution by Respondent Merrill and forum fees of \$30,150.00 which were assessed against Respondent Merrill by the Panel.

Any and all requests for relief not specifically addressed herein 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	= \$ 300.00
Third Party claim filing fee	= \$1,000.00

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. Accordingly, Respondent Merrill is a party and a member firm.

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:

May 10-13, 2005, adjournment by Claimants. The Panel waived assessment of the adjournment fee.

October 12-14, 2005, adjournment by Respondent Merrill. The Panel assessed adjournment fees in the amount of \$1,125.00 to Respondent Merrill.

March 7-10, 2006, adjournment by Claimants. The Panel assessed adjournment fees in the amount of \$1,500.00 to Respondent Merrill.

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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: September 23, 2004	1 session
April 12, 2005	1 session
Six (6) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$6,750.00
Pre-hearing conferences: June 9, 2004	1 session
April 21, 2005	1 session
May 10, 2005	1 session
February 15, 2006	1 session
March 2, 2006	1 session

	April 13, 2006	1 session	
Nineteen (19) Hearing sessions @ \$1,125.00/session			= \$21,375.00
Hearing dates:	February 7, 2006	2 sessions	
	February 8, 2006	2 sessions	
	February 9, 2006	2 sessions	
	May 15, 2006	2 sessions	
	May 16, 2006	2 sessions	
	May 17, 2006	3 sessions	
	May 18, 2006	2 sessions	
	May 26, 2006	2 sessions	
	May 27, 2006	2 sessions	
One (1) Deliberation session @ 1,125.00/session			= \$ 1,125.00
	July 13, 2006	1 session	
<hr/> Total Forum Fees			= \$30,150.00

The Panel has assessed the total forum fees of \$30,150.00 to Respondent Merrill.

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 are 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

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less Payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill is solely liable for:

Member Fees	= \$ 5,200.00
Third Party Claim Filing Fee	= \$ 1,000.00
Adjournment Fees	= \$ 2,625.00
Forum Fees	= \$30,150.00
Total Fees	= \$38,975.00
Less payments	= \$ 9,950.00
Balance Due NASD Dispute Resolution	= \$29,025.00

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

ARBITRATION PANEL

Arthur W. Pigott

Cynthia Lee Traina

John Earl Caulking, Esq.

Non-Public Arbitrator, Presiding Chairperson

Public Arbitrator

Public Arbitrator

Concurring Arbitrators' Signatures

/s/

Arthur W. Pigott

Non-Public Arbitrator, Presiding Chairperson

Signature Date

/s/

Cynthia Lee Traina

Public Arbitrator

Signature Date

/s/

John Earl Caulking, Esq.

Public Arbitrator

Signature Date

July 21, 2006

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

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NASD

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John Earl Caulking, Esq.

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Public Arbitrator

Concurring Arbitrators' Signatures



Arthur W. Pigott
Non-Public Arbitrator, Presiding Chairperson

7-20-06
Signature Date

Cynthia Lee Traina
Public Arbitrator

Signature Date

John Earl Caulking, Esq.
Public Arbitrator

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Signature Date



Cynthia Lee Traina
Public Arbitrator



Signature Date

John Earl Caulking, Esq.
Public Arbitrator

Signature Date

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John Earl Caulking, Esq.
Public Arbitrator

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Signature Date

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