

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lazaro M. Mora, IRA v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Peter N. Meme, Frank P. Yacobowsky and Larry N. Ovnicek

Case Number: 04-00650

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Lazaro M. Mora, IRA hereinafter referred to as "Claimant": James A. Prestiano, Esq., The Law Offices of James A. Prestiano, P.C., Commack, NY.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPF&S"), Peter N. Meme ("Meme"), Frank P. Yacobowsky ("Yacobowsky") and Larry N. Ovnicek ("Ovnicek"), hereinafter collectively referred to as "Respondents": David J. Libowsky, Esq., Bressler, Amery & Ross, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 29, 2004.

Claimant signed the Uniform Submission Agreement: January 30, 2004.

Statement of Answer filed by Respondents on or about: April 1, 2004.

Respondents MLPF&S and Meme signed the Uniform Submission Agreement but did not date it.

Respondent Yacobowsky signed the Uniform Submission Agreement: March 29, 2004.

Respondent Ovnicek signed the Uniform Submission Agreement: March 31, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise, misrepresentations, suitability; breach of fiduciary duty, churning and excessive trading to generate commissions. The causes of action relate to unspecified securities products.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of at least \$200,000.00, plus punitive damages in the amount of at least \$200,000.00, attorneys' fees, interest, forum and filing fees and such other relief the panel deems appropriate.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety, this matter be expunged from Respondents Meme, Yacobowsky and Ovnicek's Central Registration Depository ("CRD") records and that the costs of this proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant made a Motion for Sanctions for Failure to Provide Requested Discovery. After due deliberation, the Panel denied the Motion.

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

AWARD

After considering the pleadings, 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:

1. The claims of the Claimant against Respondents Meme, Yacobowsky and Ovnicek are dismissed in their entirety.
2. Respondent MLPF&S is liable and shall pay to Claimant compensatory damages in the amount of \$72,900.00.
3. Respondent MLPF&S is liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
4. Respondents Meme, Yacobowsky and Ovnicek's requests for expungement of their CRD records are denied.
5. Any and all relief not specifically addressed herein, including punitive damages, is 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

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 persons at the time of the events giving rise to the dispute. Accordingly, MLPF&S is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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
Pre-hearing conference: August 9, 2004 1 session	

Sixteen (16) Hearing sessions @ \$1,125.00	= \$18,000.00
Hearing Dates:	
February 23, 2005	2 sessions
February 24, 2005	2 sessions
February 25, 2005	2 sessions
April 11, 2005	2 sessions
April 12, 2005	2 sessions
April 13, 2005	2 sessions
August 8, 2005	2 sessions
August 9, 2005	2 sessions

Total Forum Fees	= \$19,125.00
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1. The Panel has assessed \$19,125.00 of the forum fees to MLPF&S.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

As stated in the "Award" section above, Respondent MLPF&S is liable for and shall reimburse Claimant for the \$300.00 filing fee.

2. Respondent, MLPF&S, is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 19,125.00
Total Fees	= \$ 24,325.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 19,125.00

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

ARBITRATION PANEL

Kenneth Diamond, Esq.
Eric P. Nachman, Esq.
Thomas Caiaffa

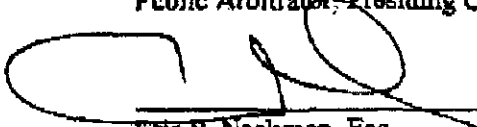
- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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.

Kenneth Diamond, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Eric P. Nachman, Esq.
Public Arbitrator



Signature Date

Thomas Caiaffa
Non-Public Arbitrator

Signature Date

August 17, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Kenneth Diamond, Esq.
Eric P. Nachman, Esq.
Thomas Caiaffa

- Public Arbitrator, Presiding Chairperson
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- Non-Public Arbitrator

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Kenneth Diamond, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date



Thomas Caiaffa
Non-Public Arbitrator

8/15/05

Signature Date

August 11, 2005

Date of Service (For NASD Dispute Resolution use only)

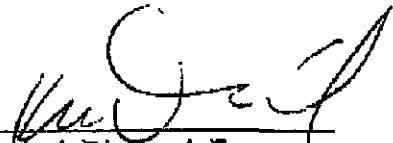
ARBITRATION PANEL

Kenneth Diamond, Esq.
Eric P. Nachman, Esq.
Thomas Caiaffa

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- 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.



Kenneth Diamond, Esq.
Public Arbitrator, Presiding Chairperson

8/17/05

Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date

Thomas Caiaffa
Non-Public Arbitrator

Signature Date

August 17, 2005

Date of Service (For NASD Dispute Resolution use only)