
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Shirley Brumberger, individually, and as personal representative of the Estate of Joseph Brumberger

Case Number: 04-00957

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Ralph Byer
Robert Sauer
Yvonne Smith

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Shirley Brumberger, individually and as personal representative of the Estate of Joseph Brumberger, hereinafter referred to as "Claimant": Alan Foxman, Esq., Law Offices of Alan Foxman, P.A., Boca Raton, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Ralph Byer ("Byer"), Robert Sauer ("Sauer") and Yvonne Smith ("Smith"), hereinafter collectively referred to as "Respondents": Craig R. Glasser, Esq., Baritz & Colman LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2004.

Claimant signed the Uniform Submission Agreement: February 5, 2004.

Motion to Dismiss and Statement of Answer filed by Respondents on or about: May 10, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: April 2, 2004.

Respondents Byer, Sauer and Smith did not file signed Uniform Submission Agreements.

Amended Statement of Claim and Response to Motion to Dismiss filed by Claimant on or about: June 21, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of contract; 2) misrepresentation; 3) negligence; and, 4) failure to supervise. The causes of action relate to the sale of Capstead Mortgage stock in Claimant's account.

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, as amended, in the amount of \$40,000.00, interest, costs and attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety, with an assessment of all costs and forum and/or processing fees against Claimant and that the Panel enter an order expunging this matter from the Central Registration Depository (the "CRD") records of Respondents Byer, Sauer and Smith.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Byer, Sauer and Smith did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about June 18, 2004, the sole arbitrator for this matter issued an Order stating that Claimant will file an Amended Statement of Claim and that a ruling on Respondents' Motion to Dismiss would be withheld until Claimant files the amended claim. Pursuant to this Order, Claimant filed an Amended Statement of Claim on or about June 21, 2004.

On or about June 21, 2004, Claimant, within the Amended Statement of Claim, withdrew all claims against Respondents Sauer and Smith.

On or about June 23, 2004, the Arbitrator issued an Order that denied the Motion to Dismiss as to the remaining Respondents.

On or about April 18, 2005, the parties notified NASD Dispute Resolution that they had settled this matter and that they will be submitting a proposed Stipulated Award with a request for expungement of the NASD CRD record of Respondent Byer.

On or about April 18, 2005, Claimant Shirley Brumberger submitted a request to NASD Dispute Resolution to change the style of this matter, due to the death of Joseph Brumberger, to reflect the Claimant as Shirley Brumberger, individually and as personal representative of the Estate of Joseph Brumberger. On or about May 20, 2005, the Arbitrator granted this request.

On or about May 19, 2005, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award with request for expungement of the NASD CRD record of Respondent Byer.

The parties stated that they resolved the issues presented in their pleadings on April 18, 2005. In connection with the resolution of this matter, Respondents asserted that, because of the nature of the claims, this action should only have been filed against Respondent Merrill Lynch, and not Respondent Byer. Accordingly, Claimant agrees to cooperate with Respondent Byer's efforts to have the Action expunged from his NASD CRD record. In connection with the resolution of the claims, the parties

agreed that upon the satisfaction of the terms of resolution, that each of Claimant and Respondents shall be barred from bringing any action based on or including the claims for which this action has been or could have been brought and that this matter be dismissed, with prejudice, as to all Respondents. The only issue presented to the Arbitrator was this Stipulated Award relating to expungement.

AWARD

After considering the pleadings and the proposed Stipulated Award with request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's withdrawal of claims is accepted and Respondents are dismissed from this matter, with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Byer's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Byer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimant's request for attorney's fees, 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	= \$175.00
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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. Accordingly, Respondent Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

Adjournment Fees

No requests for adjournments were filed in this matter.

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:

No three-day cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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 a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: July 6, 2004 1 session	
Total Forum Fees	= \$450.00

The Arbitrator has assessed \$225.00 of the forum fees to Claimant.

The Arbitrator has assessed \$225.00 of the forum fees jointly and severally to Respondents Merrill Lynch and Byer.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 225.00
Total Fees	= \$ 400.00
Less payments	= \$ 400.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 2,625.00
Total Fees	= \$ 2,625.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Merrill Lynch and Byer are jointly and severally liable for:

Forum Fees	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 225.00

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

ARBITRATOR

Elizabeth L. Clark

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

/s/
Elizabeth L. Clark
Public Arbitrator, Presiding Chairperson

05/26/05
Signature Date

05/27/05
Date of Service (For NASD Dispute Resolution office use only)

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

ARBITRATOR


Elizabeth L. Clark

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature



Elizabeth L. Clark
Public Arbitrator, Presiding Chairperson


Signature Date

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