

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Paul Liberman and Mitchell Liberman as Co-Trustees of the Marvin R. Liberman Revocable Trust Agreement, dated June 10, 1985, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Marc A. Liberman, Respondents

Case Number: 04-01079

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

William S. Bonneheim, Esq.
William S. Bonnheim, PLC
Palm Desert, California

For Respondents:

Chad P. Robinson, Esq.
Winstead Sechrest & Minick P.C.
Dallas, Texas

CASE INFORMATION

Statement of Claim filed: February 17, 2004

Claimant's Uniform Submission Agreement signed: undated

Joint Statement of Answer Subject to Objection to Hearing Location filed by Respondents:
July 8, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: July 2, 2004

Respondent Marc A. Liberman's Uniform Submission Agreement signed: July 2, 2004

CASE SUMMARY

Claimant alleged churning, unauthorized trading, unsuitability, unauthorized transfers, failure to supervise, and breach of fiduciary duty, involving unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted the following defenses: Claimant's alleged damages were illusory, Claimant failed to state a claim, Claimant failed to particularize facts or legal theories under which Respondents could be liable, Claimant self directed the account(s), Claimant directed, authorized, consented to, acquiesced and/or ratified all transactions in the account(s), Claimant made the investment decisions complained of, Claimant's alleged losses were due to their its own investment decisions or market conditions outside Respondents' control and Respondents acted properly and in good faith, Respondents made no guarantee to Claimant, Claimant's claims are barred by waiver and estoppel, Claimant failed to mitigate the alleged damages, statute of limitations, economic loss rule, unclean hands, and double recovery due to a parallel proceeding.

RELIEF REQUESTED

Claimant requested \$1,700,000.00 in disgorgement of excessive commissions, spreads and margin interests; prejudgment interest at the statutory legal rate; lost opportunity cost; unspecified punitive damages; and costs, including attorney's fees and expert fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, costs, including attorney's fees, forum fees, and arbitration costs, and expungement of Respondent Marc A. Liberman's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

On April 14, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondents filed an Objection to Hearing Location in their Answer on July 8, 2004, requesting that the hearing location be moved to Dallas, Texas. On February 17, 2005, Claimant filed an Opposition to Respondents' Motion for Change of Venue. On March 2, 2005, Respondents filed a Reply to Claimant's Opposition to Respondents' Motion for Change of Venue. On March 9, 2005, the Panel held a telephonic pre-hearing conference with the parties to hear oral argument on Respondents' motion. On March 9, 2005, after reviewing the papers submitted on behalf of the parties and hearing oral argument, the Panel issued an Order denying Respondents' Motion for Change of Venue.

On November 18, 2005, Claimant notified NASD that the parties had reached a settlement in this matter and had agreed to submit a Stipulated Award for the Panel's approval.

The parties 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 and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents have entered into a confidential settlement agreement.
2. Claimant's claims against Respondents are hereby dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Marc A. Liberman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Marc A. Liberman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The parties shall bear their respective costs, including attorney's fees.
5. All other relief requested and not expressly granted is denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

November 15-18, 2005 hearing adjournment requested by all parties	= \$ 1,200.00
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The Panel waived \$1,200.00 of the adjournment fees.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: September 30, 2005 1 session	
2 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: February 3, 2005 1 session	
March 9, 2005 1 session	
Total Forum Fees	= \$ 2,850.00

1. The Panel assessed \$1,200.00 of the forum fees to Claimant.
2. The Panel assessed \$1,650.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,700.00
Less payments	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,650.00
Less payments made by Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated	= \$(550.00)
Balance Due NASD Dispute Resolution	= \$ 1,100.00

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

ARBITRATION PANEL

Daniel K. Donahue	-	Public Arbitrator, Presiding Chair
Charles B. Shryock	-	Public Arbitrator
Grace L. Heyne	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Daniel K. Donahue
Chair, Public Arbitrator

1/04/06
Signature Date

Charles B. Shryock
Public Arbitrator

Signature Date

Grace L. Heyne
Non-Public Arbitrator

Signature Date

1/4/06
Date of Service

ARBITRATION PANEL

Daniel K. Donahue	-	Public Arbitrator, Presiding Chair
Charles B. Shryock	-	Public Arbitrator
Grace L. Heyne	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Daniel K. Donahue
Chair, Public Arbitrator

Signature Date



Charles B. Shryock
Public Arbitrator

JAN 3, 2006

Signature Date

Grace L. Heyne
Non-Public Arbitrator

Signature Date

1/4/06

Date of Service

ARBITRATION PANEL

Daniel K. Donahue	-	Public Arbitrator, Presiding Chair
Charles B. Shryock	-	Public Arbitrator
Grace L. Heyne	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Daniel K. Donahue
Chair, Public Arbitrator

Signature Date

Charles B. Shryock
Public Arbitrator

Signature Date

Grace L. Heyne
Grace L. Heyne
Non-Public Arbitrator

12-30-2005
Signature Date

1/4/06
Date of Service