
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Festus and Helen Stacy Foundation, Inc.
Douglas and Virlee Stepelton

Case Number: 04-01425

Name of the Respondent

Merrill Lynch Pierce Fenner & Smith

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Festus and Helen Stacy Foundation, Inc. ("Stacy Foundation") and Douglas and Virlee Stepelton ("Stepelton"), hereinafter referred to as "Claimants": Wendell R. Bird, Esq., Bird & Loechl, LLC, Atlanta, Georgia.

For Merrill Lynch Pierce Fenner & Smith, hereinafter referred to as "Respondent": Christopher P. Hall, Esq. and Joaquin Ezcurra, Esq., Morgan, Lewis & Bockius LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 2004.

Claimant Stacy Foundation signed the Uniform Submission Agreement: March 2, 2004.

Claimants Stepelton signed the Uniform Submission Agreement: March 1, 2004

Statement of Answer filed by Respondent on or about: June 29, 2004.

Respondent signed the Uniform Submission Agreement: October 6, 2004.

Notice of Dismissal of the claims of Claimants Stepelton filed by Claimants on or about: September 24, 2004.

Motion to Amend the Statement of Claim filed by Claimant Stacy Foundation on or about: October 20, 2004.

Opposition to Motion to Amend the Statement of Claim filed by Respondent on or about: November 15, 2004.

Reply to Opposition to Motion to Amend the Statement of Claim filed by Claimant Stacy Foundation on or about: November 29, 2004.

Amended Statement of Claim filed by Claimant Stacy Foundation on or about: January 5, 2005.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: February 8, 2005.

Motion to Dismiss filed by Respondent on or about: February 1, 2005.

Response to Motion to Dismiss filed by Claimant Stacy Foundation on or about: October 7, 2005.

Reply to Claimant's Response to Motion to Dismiss filed by Respondent on or about: October 7, 2005.

Motion to Strike and Preclude References filed by Respondent on or about: November 15, 2004.
Response to Motion to Strike and Preclude References filed by Claimant Stacy Foundation on or about: November 29, 2004.

Motion to Dismiss Certain Claims filed by Respondent on or about: March 30, 2006.

Response to Motion to Dismiss Certain Claims filed by Claimant Stacy Foundation on or about: March 31, 2006.

Motion in Limine to Preclude filed by Respondent on or about: May 9, 2006.

Opposition to Respondent's Motion in Limine to Preclude filed by Claimant Stacy Foundation on or about: May 11, 2006.

Motion in Limine for Exclusion filed by Claimant Stacy Foundation on or about: May 9, 2006.

Opposition to Claimants Motion in Limine for Exclusion filed by Respondent on or about: May 10, 2006.

CASE SUMMARY

Claimant Stacy Foundation asserted the following causes of action, as amended: 1) federal securities fraud; 2) violation of Florida Securities Act, Florida Statutes, Chapter 517; 3) common law fraud, fraudulent and negligent misrepresentation and fraud in the inducement; and, 4) breach of fiduciary duty, including suitability and negligence or gross negligence. The causes of action relate to the purchase of various securities including, but not limited to, the ML Lee Internet Fund in Claimant's account.

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

RELIEF REQUESTED

Claimant Stacy Foundation requested rescissory or compensatory damages, as amended, in the amount of \$7,773,223.00, interest or a reasonable return, declaratory relief, exemplary and punitive damages, pre-judgment interest, costs, attorneys' fees pursuant to Florida Statutes, §517.211(6) and §768.72 and for such other and further relief as the Panel deemed just and appropriate.

Respondent requested that the Amended Statement of Claim be dismissed in its entirety, plus an award in its favor and all other relief as the Panel deemed equitable and just.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants named certain non-members of NASD Dispute Resolution in their Statement of Claim. Said non-members did not submit to the jurisdiction of NASD.

On or about September 24, 2004, Claimants Stepelton dismissed, with prejudice, their individual claims against Respondent. Pursuant to this dismissal, these individuals were not included in or parties to the Amended Statement of Claim.

On or about December 23, 2004, the Panel issued an Order that granted Claimant's Motion to Amend the Statement of Claim.

On December 2, 2005, the Panel issued an Order that granted in part and denied in part the Motion to Dismiss that was filed on February 1, 2005. In addition, regarding Respondent's Motion to Strike and Preclude References, the Panel determined that unless governmental or regulatory investigations relate to specific securities involved in Claimant's claims such information will not be admitted as evidence and shall be disregarded by the Panel unless Claimant is able to establish evidentiary relevance to material issues in the case while generally applying the standards set forth in the Federal Rules of Evidence.

On or about April 28, 2006, the Panel issued an Order that denied Respondent's Motion to Dismiss Certain Claims.

Before the evidentiary hearings, Claimant advised NASD Dispute Resolution that the claims regarding its investment in AOL, Homestore and Comcast are dismissed.

The parties had made Motions in Limine prior to the final hearing and these essentially were subject to deferred ruling. On May 24, 2006, the Panel was joined by attorney Edward Krugman who represented parties involved in a proceeding in U.S. District Court wherein Claimant had sought to enforce subpoenas concerning valuation information from TH Lee Putnam Ventures, L.P., the issuer of the security for which the ML Lee Internet Fund was formed to invest. At such point, Claimant sought to have the subpoenas enforced and documents produced and Respondent sought to prevent such. The Panel listened to argument and conferred and determined that absent a showing that M L Lee Internet Fund had knowledge of the valuation information possessed by TH Lee Putnam Ventures, it would not be appropriate to consider such material. Claimant was given leave to introduce any evidence of such knowledge, as well as any valuation information publicly available at the relevant time, but the Panel declined to require disclosure of the TH Lee Putnam Ventures information at such time.

NASD Dispute Resolution advised the parties that Arbitrator Reid Conklin relocated to Florida from Georgia. The parties advised NASD Dispute Resolution that they would each pay 50% of the travel and lodging expenses of Arbitrator Conklin in order for him to attend the evidentiary hearings scheduled in Atlanta, Georgia.

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

AWARD

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

Respondent is found liable for the claim of unsuitability. Claimant shall have rescission of the purchase of the ML Lee Internet Fund. Respondent shall reimburse Claimant in an amount equal to the initial purchase price plus all capital calls for such security, reduced by all cash or other distributions received by Claimant plus any late charges, penalties or interest paid by Claimant with respect to any of such capital calls concerning which there was an ongoing dispute between the parties. It is understood by the Panel that such amount is not subject to disagreement between the parties, but if they are unable to agree on the amount the Panel will reconvene and hear such matter as is necessary to resolve such. Because the underlying value of such security was disputed, Respondent asserting it to be in excess of the net amount of Claimant's investment and Claimant asserting to the contrary, Claimant stipulated that it waived any claim for interest on such amount and both parties agreed that no determination of the value would be required.

Claimant's requests for attorneys' fees and costs are denied.

Counsel for TH Lee Putnam Ventures, LP, the non-party involved in the subpoena proceeding, has related that reports have appeared in the financial press from unnamed sources relating that the subpoena enforcement process was ongoing and that such involved the issue of misstated valuations of securities held in the ML Lee Putnam Internet Fund. He has requested that in as much as the subpoena ultimately was not enforced by the Panel, IF an award is made with respect to the Fund (and it is) that it be articulated in the Award that the matter was decided solely on the issue of suitability for the Claimant of investment in such security and not based on a finding of misstated valuations by either TH Lee Putnam Ventures or ML Lee Internet Fund or ML Private Equity Inc. The Panel feels this is appropriate under the circumstances and directs that such be included in the Award.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for exemplary and punitive damages and request for relief pursuant to Florida Statutes, Chapter 517, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 600.00
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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 is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee	= \$ 5,500.00
Total Member Fees	= \$ 9,600.00

Adjournment Fees

No requests for adjournments were filed in this matter for which fees were assessed.

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 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:

Two (2) Decisions on discovery-related motions on the papers with one (1) Arbitrator @\$200.00 Claimant submitted (1) one discovery-related motion. Respondent submitted (1) one discovery-related motion.	= \$ 400.00
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One (1) Hearing session with a single Arbitrator @\$450.00 Hearing Date: June 7, 2006	1 session	= \$ 450.00
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Four (4) Pre-hearing sessions with the Panel @ \$1,200.00 Pre-hearing conferences: September 27, 2004 December 20, 2004 May 16, 2005	1 session 1 session 2 sessions	= \$ 4,800.00
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Nineteen (19) Hearing sessions with the Panel @ \$1,200.00 Hearing Dates: May 23, 2006 May 24, 2006 May 25, 2006 May 30, 2006 May 31, 2006 June 1, 2006 June 6, 2006 June 7, 2006 June 8, 2006	2 sessions 3 sessions 2 sessions 2 sessions 2 sessions 2 sessions 2 sessions 2 sessions 2 sessions	= \$22,800.00
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Total Forum Fees	= \$28,450.00
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The Panel has assessed \$14,225.00 of the forum fees to Claimant Stacy Foundation
The Panel has assessed \$14,225.00 of the forum fees to Respondent.

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.

Administrative costs were incurred during this proceeding:

Costs incurred for the travel and lodging expenses of Arbitrator Conklin = \$4,102.02

Claimant Stacy Foundation has agreed to pay and is liable for \$2,051.01 of Arbitrator Conklin's travel and lodging expenses.

Respondent has agreed to pay and is liable for \$2,051.01 of Arbitrator Conklin's travel and lodging expenses.

Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Claimant Stacy Foundation is solely liable for:

Administrative Costs	= \$ 2,051.01
<u>Forum Fees</u>	= \$ 14,225.00
<u>Total Fees</u>	= \$ 16,276.01
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 15,076.01

Respondent is solely liable for:

Member Fees	= \$ 9,600.00
Administrative Costs	= \$ 2,051.01
<u>Forum Fees</u>	= \$ 14,225.00
<u>Total Fees</u>	= \$ 25,876.01
<u>Less payments</u>	= \$ 10,150.00
Balance Due NASD Dispute Resolution	= \$ 15,726.01

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

ARBITRATION PANEL

James G. Killough, Esq.

—

Public Arbitrator, Presiding Chairperson

Ralph S. Paden

—

Public Arbitrator

Reid P. Conklin

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Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

James G. Killough, Esq.

Public Arbitrator, Presiding Chairperson

06/29/06

Signature Date

/s/

Ralph S. Paden

Public Arbitrator

06/30/06

Signature Date

/s/

Reid P. Conklin

Non-Public Arbitrator

06/30/06

Signature Date

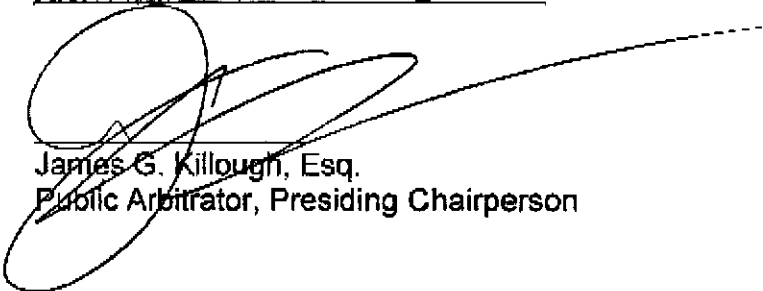
07/03/06

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

ARBITRATION PANEL

James G. Killough, Esq.	-	Public Arbitrator, Presiding Chairperson
Ralph S. Paden	-	Public Arbitrator
Reid P. Conklin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



James G. Killough, Esq.
Public Arbitrator, Presiding Chairperson

6/29/06
Signature Date

Ralph S. Paden
Public Arbitrator

Signature Date

Reid P. Conklin
Non-Public Arbitrator

Signature Date

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James G. Killough, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Ralph S. Paden
Ralph S. Paden
Public Arbitrator

June 30, 2006
Signature Date

Reid P. Conklin
Non-Public Arbitrator

Signature Date

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Ralph S. Paden	-	Public Arbitrator
Reid P. Conklin	-	Non-Public Arbitrator


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James G. Killough, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Ralph S. Paden
Public Arbitrator

Signature Date



Reid P. Conklin
Non-Public Arbitrator

6-30-06

Signature Date

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