

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Raymond H. Maxwell and Barbara S. Maxwell, Claimants, v. Merrill Lynch, Pierce, Fenner & Smith Inc., Robert Scott Como and Joseph Sotelo, Jr., Respondents.

Case Number: 04-01653

Hearing Site: Phoenix, Arizona

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

REPRESENTATION OF PARTIES

For Claimants:

Raymond H. Maxwell
Scottsdale, Arizona
(pro se)

For Respondents:

David E. Bamberger, Esq.
Office of General Counsel
Merrill Lynch, Pierce, Fenner
& Smith Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed on about: March 10, 2004.

Claimants signed the Uniform Submission Agreement: March 8, 2004.

Joint Statement of Answer filed by Respondents: May 10, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 10, 2004.

CASE SUMMARY

Claimants alleged that at least one of the individual respondents negligently failed to execute an order to sell 600 shares of stock that was allegedly placed at a face-to-face meeting. Claimants also alleged negligent supervision against Merrill Lynch.

Respondents denied that any such order was placed and asserted various affirmative defenses.

RELIEF REQUESTED

Pursuant to the Statement of Claim, Claimant requested the following damages:

Compensatory Damages

\$12,122.00

Interest
Attorney's Fees

6% per annum
Amount Unspecified

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, expungement of all references to this arbitration from Respondent Sotelo's and Respondent Como's registration records maintained by the NASD's Central Registration Depository and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Sotelo and Como did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim are bound by the determination of the arbitration panel on all issues submitted.

Respondents Sotelo and Como were dismissed with prejudice by agreement of the parties on or about October 12, 2004.

Merrill Lynch and Claimants advise that on or about November 4, 2004, they entered into an agreement to settle this matter. Under such settlement, Claimants will receive no money from any Respondent but Respondent Merrill Lynch will assume responsibility for Claimants' NASD filing fees and forum costs.

The parties have further agreed to receive conformed copies of the award while the original remains on file with NASD Dispute Resolution.

AWARD

The parties having entered into a binding agreement to settle and resolve this matter, now, in lieu of a hearing, upon motion of all parties and upon all prior pleadings and papers submitted in this matter, the undersigned arbitrator hereby grants the motion and enters this award granting the following relief:

- 1) Respondent Merrill Lynch is dismissed with prejudice.
- 2) The arbitrator recommends the expungement of all references to the above-captioned arbitration from the registration records maintained by the NASD Central Registration Depository ("CRD") with respect to each of Joseph Sotelo, Jr. and Robert Scott Como, with the understanding that pursuant to Notices to Members 99-09 and 99-54, each such Respondent must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) Respondent Merrill Lynch shall pay or absorb all filing and other fees, costs and assessments charged by NASD as described below. Other than such NASD-imposed

fees, costs and assessments, each party shall bear its own costs and expenses associated with the above-referenced arbitration, including any attorney's fees.

- 4) Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. has received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$125.00
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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. In this matter, the member firm Merrill Lynch, Pierce, Fenner & Smith Inc., is a party.

Member Surcharge	= \$425.00
Total Member Fees	= \$425.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date, October 6, 2004, adjournment requested by Claimants (fee waived by Arbitrator)	= \$450.00
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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:

Hearing Date, October 6, 2004, adjournment requested by Claimants	= \$100.00
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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 arbitrators or any of them. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$450.00	= \$450.00
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Pre-hearing conference: August 4, 2004 1 session

Total Forum Fees

= \$450.00

The Panel assessed \$450.00 of the forum fees jointly and severally against Respondents.

Fee Summary

Claimants, Raymond H. Maxwell and Barbara S. Maxwell shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	125.00
Three Day Cancellation Fee	= \$	100.00
<u>Forum Fees</u>	= \$	225.00
Total Fees	= \$	450.00
<u>Less payments</u>	= \$	-450.00
Balance	= \$	0.00
<u>Credit pursuant to agreement of the parties</u>	= \$	450.00
Balance to be refunded by NASD Dispute Resolution	= \$	450.00

Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc., shall be and hereby is liable for:

Claimants' fees pursuant to the agreement of the parties	= \$	450.00
Member Fees	= \$	425.00
<u>Forum Fees</u>	= \$	225.00
Total Fees	= \$	1,100.00
<u>Less payments</u>	= \$	-425.00
Balance Due NASD Dispute Resolution	= \$	675.00

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

ARBITRATION PANEL

Eugene W. Bronski, Esq. - Public Arbitrator, Presiding Chair

Arbitrator's SignatureEugene W. Bronski, Esq.
Public Arbitrator, Presiding Chair12-3-04
Date12/7/04
Date of Service (For NASD office use only)