

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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CASE: 04-01944

Anthony V. Serba, Claimant v. John K. Bruno, Respondent

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**ATTORNEYS:**

Claimant Anthony V. Serba ("Claimant") appeared *pro se*, Houston, TX.

For Respondent John K. Bruno ("Respondent") appeared Jackie M. Gorham, Esq., of the firm Ogden, Gibson, White, Broocks & Longoria, LLP, Houston, TX.

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**NATURE OF DISPUTE:** Customer v. Associated Person.

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**DATE FILED:** March 22, 2004.

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**CASE SUMMARY:** Claimant alleged that Respondent misrepresented information and failed to disclose material facts with respect to Claimant's purchase of TXU Europe Preferred shares. Claimant maintained that due to Respondent's actions, his account suffered losses. Claimant's claim involved preferred stock.

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**ARBITRATOR'S REPORT:** See attached "Exhibit A".

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**Claim Data**

Claim: \$10,291.09  
Punitive: \$10,291.09  
Interest: \$520.99  
Filing Fees: Unspecified  
Other: \$25.00

**Award Data**

Award: \$.00  
Punitive: \$.00  
Interest: \$.00  
Filing Fees: \$.00  
Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are denied. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 6) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John K. Bruno's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent John K. Bruno must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Merrill Lynch, Pierce, Fenner & Smith, Inc., the member firm that Respondent was associated with at the time the dispute arose, has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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Award 04-01944

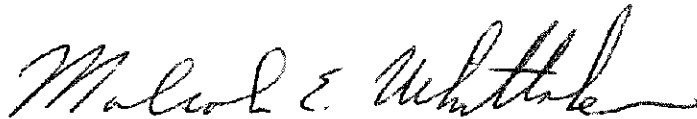
Malcolm Edwin Whittaker

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Sole Public Arbitrator

AFFIRMATION

I, Malcolm Edwin Whittaker, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Malcolm Edwin Whittaker

October 22, 2004  
Signature Date

November 15, 2004

Date of Service (For NASD-DR office use only)

NASD DISPUTE RESOLUTION  
IN THE MATTER OF THE ARBITRATION BETWEEN

ANTHONY V. SERBA

v.

JOHN K. BRUNO, Individually

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) NASD CASE NO. 04-01944  
) EXHIBIT A – ARBITRATOR’S  
) REPORT  
)  
)  
)

NATURE OF DISPUTE

Customer v. Associated Person

REPRESENTATION OF PARTIES

Claimant Anthony V. Serba (“Claimant”) represented himself.

Respondent John K. Bruno was represented by Linda Broocks and Jackie Gorham, Attorneys-at-Law, both of Ogden, Gibson, White, Broocks & Longoria, L.L.P.

CASE INFORMATION

Claimant’s Statement of Claim was filed on or about March 16, 2004.

Respondent John K. Bruno’s Answer to Statement of Claim was filed on or about May 3, 2004.

Claimant’s Uniform Submission Agreement was filed on or about March 16, 2004.

Respondent’s Uniform Submission Agreement was filed on or about May 19, 2004.

Claimant, by letter dated July 27, 2004, replied to Respondent’s Answer to Statement of Claim.

CASE SUMMARY

Claimant Anthony V. Serba’s Claim Information Sheet alleges that Respondent John K. Bruno (“Respondent”) is liable to Claimant for:

- 1) "Omission of Facts;" and,
- 2) "Misrepresentations/Non-Disclosures" by Merrill Lynch Account Representative Mark Tidwell concerning TXU Capital I, a preferred stock;

Claimant's *Pro Se* Statement of Claim also alleged Respondent was liable because of:

- 3) "unsuitability;" and,
- 3) Respondent's "failure to supervise" Account Representative Mark Tidwell.

Items 3 and 4 were not checked on Claimant's "Claim Information Sheet," but were set forth in his Statement of Claim.

Account Representative Tidwell is not a party to the present arbitration. Merrill Lynch is also not a party to the present arbitration. According to Claimant, he named Respondent Bruno, rather than Tidwell or Merrill Lynch because: "*Bruno[Respondent] is responsible for the legality and ethics of all transactions.*"

#### RELIEF REQUESTED

Claimant requested:

- a) \$10,291.09 in actual damages;
- a) \$10,291.09 in punitive damages;
- a) \$520.99 in interest; and,
- a) \$25.00 in costs.
- a) Claimant also requested a doubling of any award based on violation of the Texas Deceptive Trade Practices Act.

Claimant did not request a hearing in this matter and left the request for a one or three arbitrator panel blank. As such, this matter is decided by a single arbitrator based on the written materials submitted by Claimant and Respondent.

Respondent requested that:

- a) the arbitration panel dismiss all claims;
- a) award Respondent his attorney's fees and costs;
- a) order that the complaint be expunged from Respondent's CRD record; and,
- a) such other and further relief as may be appropriate.

### ISSUES CONSIDERED AND DECIDED

Claimant Serba brought this action against Respondent Bruno. Claimant Serba did not name Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") as a respondent. Claimant Serba did not name Merrill Lynch Account Representative Mark Tidwell as a respondent.

The parties do not appear to dispute that Respondent Bruno did not have contact with Claimant Serba until after Claimant Serba lost a substantial amount of money investing in TXU Europe based, at least in part, on the advice of Merrill Lynch Account Representative Mark Tidwell.

As is his right, Claimant Serba represented himself. Claimant Serba appears to have brought this action against only Respondent Bruno based on the mistaken belief that: "*Bruno[Respondent] is responsible for the legality and ethics of all transactions[at non-party Merrill Lynch].*" This is not the law.

Based on the evidence submitted, Claimant Serba has failed to show that:

- 1) Respondent Bruno is liable to Claimant for "*Omission of Facts*" because Claimant has not proven that Respondent Bruno, individually, represented any facts to Claimant Serba;
- 1) Respondent Bruno is liable to Claimant for "*Misrepresentations/Non-Disclosures*" because Claimant has not proven that Respondent Bruno, individually, made any representations or failed to disclose appropriate information;
- 1) Respondent Bruno is liable to Claimant for giving "*Unsuitable[advice]*" because Claimant has not proven that Respondent Bruno, individually, gave any advice to Claimant; and,
- 1) That Respondent Bruno is liable to Claimant for "*failure to supervise [Account Representative Mark Tidwell]*" because Claimant has not shown that Respondent Bruno, individually, was responsible for supervising non-party Tidwell.

It appears that Claimant Serba believes that Respondent Bruno is liable for the actions of non-party Tidwell because Respondent Bruno is "[c]ompliance [o]fficer of this ML[Merrill Lynch] branch." This is not the law. If Claimant Serba had named Merrill Lynch as a party, Claimant might have been able to prove that Merrill Lynch was responsible for his loss under the Doctrine of *Respondeat Superior*. This doctrine potentially allows Merrill Lynch to be liable for any wrongful acts committed by its

employees. However, the Doctrine can only be applied if Merrill Lynch is named as a party.

It also appears that Claimant Serba believes that Respondent Bruno is individually liable for "Omission of Facts," "Misrepresentation/Non-Disclosures" and "Unsuitability" because Respondent Bruno is "[c]ompliance [o]fficer of this ML[Merrill Lynch] branch." This is not the law.

This Award expressly does not decide whether non-parties Merrill Lynch and Account Representative Mark Tidwell are liable to Claimant Serba concerning his purchase of TXU Capital I, a preferred stock on or about August 2002. These issues were not before this Panel. The only issue before this Panel was the potential liability of Respondent John K. Bruno, individually.

#### AWARD


After considering the papers submitted by the Claimant and Respondent, the Panel decides in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claims for violation of the Texas Deceptive Trade Practices Act and for punitive damages, are hereby DENIED and DISMISSED;
- 2) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent John K. Bruno's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Bruno must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3) Each party shall bear its own costs, including attorney's fees; and,
- 4) All other relief not expressly granted is hereby DENIED.

#### ARBITRATION PANEL

Malcolm E. Whittaker

Public Arbitrator, sole member



Malcolm E. Whittaker, Public Arbitrator

October 15, 2004

Signature Date