
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Robert Cohen

Case Number: 04-02063

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

David Diaz

Kris Rosado

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Robert Cohen, hereinafter referred to as "Claimant": Wayne H. Schwartz, Esq., Blum, Silver & Schwartz, LLP, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), David Diaz ("Diaz") and Kris Rosado ("Rosado"), hereinafter collectively referred to as "Respondents": Terry R. Weiss, Esq., Avital Stadler, Esq., Brian C. Hale, Esq. and Bradley J. Cline, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: March 26, 2004.

Claimant signed the Uniform Submission Agreement: March 16, 2004.

Statement of Answer filed by Respondents on or about: June 16, 2004.

Respondent Diaz signed the Uniform Submission Agreement: June 11, 2004.

Respondent Merrill signed the Uniform Submission Agreement: June 14, 2004.

Respondent Rosado signed the Uniform Submission Agreement: July 9, 2004.

CASE SUMMARY

Claimant asserted causes of action related to allegations that Respondents made unsuitable recommendations with regard to accounts maintained by Claimant. Claimant asserted claims for breach of fiduciary duty in recommending unsuitable investments, fraud, negligence and failure to disclose material facts. The causes of action relate to the purchase and sale of shares of various stocks in Claimant's account including, but not limited to: Homestore.com; Worldcom; Tyco; Nortel Networks; Amazon.com; Yahoo; Ariba; Commerce One; Phone.com; Juniper Networks; Global Crossing; and, Oracle.

Respondents denied all allegations of wrongdoing and asserted the following defenses: all trades were suitable and authorized by Claimant; and, Claimant's claims were barred by the applicable statutes of limitation and by ratification, waiver and estoppel.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$184,000.00, plus interest at the legal rate from the date of purchase, or reasonable market return, rescission, punitive damages, costs and any other relief deemed just and proper.

Respondents requested an award rejecting Claimant's Statement of Claim in its entirety, assessing all forum fees and costs against Claimant and granting any other relief deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 5, 2005, Claimant notified NASD Dispute Resolution that Respondents Rosado and Diaz were voluntarily dismissed, with prejudice.

On or about January 31, 2005, Claimant notified NASD Dispute Resolution that this matter had been settled.

On or about February 8, 2005, the parties submitted a proposed Stipulated Award with a request that the Panel enter the Stipulated Award expunging this matter from Respondent Rosado and Diaz's NASD Central Registration Depository ("CRD") records.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

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

Respondents are dismissed, with prejudice.

The Panel recommends the expungement of all references to the above captioned arbitration from the registration records maintained by the NASD CRD for Respondents Rosado and Diaz with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Diaz and Rosado must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive

Each party shall bear its respective costs including attorneys' fees.

Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied in its entirety.

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 = \$ 300.00

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 persons 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 = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

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 incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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 the Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: September 13, 2004 1 session

Total Forum Fees = \$1,125.00

The Panel has assessed \$562.50 of the forum fees to Claimant.
The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

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 are 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 in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Robert K. Ruskin, Esq.	-	Public Arbitrator, Presiding Chairperson
Thomas Czinner	-	Public Arbitrator
Robert S. Natiss	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

02/13/05

Robert K. Ruskin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

02/16/05

Thomas Czinner
Public Arbitrator

Signature Date

/s/

02/23/05

Robert S. Natiss
Non-Public Arbitrator

Signature Date

02/23/05

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


Concurring Arbitrators' Signatures

Robert K. Ruskin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas Czinner
Public Arbitrator

Signature Date



Robert S. Natiss
Non-Public Arbitrator



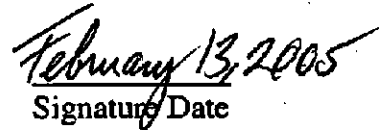
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Public Arbitrator, Presiding Chairperson



Signature Date

Thomas Czinner
Public Arbitrator

Signature Date

Robert S. Natiss
Non-Public Arbitrator

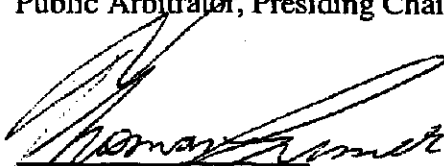
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Robert K. Ruskin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Thomas Czinner
Public Arbitrator

2-16-05
Signature Date

Robert S. Natiss
Non-Public Arbitrator

Signature Date

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