
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Saul E. Freed, TTEE U/A DTD 09/19/86 by Saul E. Freed

Case Number: 04-02376

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Saul E. Freed, TTEE U/A DTD 09/19/86 by Saul E. Freed, hereinafter referred to as "Claimant": Richard A. Stephens, Esq., Law Office of Richard A. Stephens, Boca Raton, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Neil S. Baritz, Esq. and Audrey B. Kaplan, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 2004.

Claimant signed the Uniform Submission Agreement: March 29, 2004.

Statement of Answer and Affirmative Defenses filed by Respondent on or about: June 3, 2004.

Respondent signed the Uniform Submission Agreement: May 12, 2004.

Reply to Affirmative Defenses filed by Claimant on or about: June 11, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: violations of Chapter 517, Florida Statutes, and Chapter 3E-600.002(2), Florida Administrative Code; state common law fraud and breach of fiduciary duty; "Controlling Persons Liability" under Securities Exchange Act, Sec. 20(a); *Respondeat Superior* liability; violation of NASD Conduct Rule 2120: *Manipulative, Deceptive, and Fraudulent Devices*; violation of NASD Conduct Rule 2310 and New York Stock Exchange Rule 405 ("Know Your Customer"): *Unsuitability*; violation of NASD Conduct Rule 2210(d)(1)(A): *Fair Dealing and Good Faith*; violation of NASD Conduct Rule 2110: *Commercial Honor and Principles of Trade*; gross negligence and negligent misrepresentations; and, breach of contract. The causes of action relate to the sale from Claimant's account of various investment grade bonds, including, but not limited to, Dade County Courthouse and Aviation bonds and Boca Raton Community Redevelopment bond, and the purchase in their place of various technology equities, including, but not limited to, Intel, Cisco, Nextel, Amazon.com, Sun and Lucent.

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

In his Reply, Claimant set forth specific denials to Respondent's affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$94,347.00, punitive damages in the amount of \$250,000.00, prejudgment interest at the highest legal rate, attorneys' fees to be awarded by a court of competent jurisdiction, costs, including filing fees, hearing session fees and expert witness fees, a disciplinary referral against Respondent, and such other and further relief as deemed appropriate by the Panel.

Respondent requested a dismissal of this action in its entirety, a determination that Respondent is the prevailing party with respect to Claimant's allegations under Florida Statutes 517.301, the assessment of all costs and forum and/or processing fees incurred in connection with the defense of this matter against Claimant, and such other and further relief as deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

During the evidentiary hearing, Claimant moved to conform the pleadings to proof, to which Respondent did not object. The Panel granted Claimant's motion.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable on the claim for violation of Chapter 517, Florida Statutes, and shall pay compensatory damages to Claimant in the amount of \$57,108.00, plus interest accruing from April 30, 2002 through April 30, 2005 in the total amount of \$12,193.00.

Claimant is directed to a court of competent jurisdiction for a determination as to entitlement and amount of attorneys' fees to be awarded.

Respondent is liable and shall reimburse Claimant the sum of \$300.00, representing the non-refundable claim-filing fee paid by Claimant to NASD Dispute Resolution.

Respondent is liable and shall reimburse Claimant the sum of \$12,425.00, representing witness fees and expert witness fees incurred by Claimant in connection with this matter.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, 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 = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member Surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested 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 assessed 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.

Injunctive relief fees were not assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 5,625.00

Pre-hearing conferences:	September 1, 2004	1 session
	September 27, 2004	1 session
	January 6, 2005	1 session
	March 10, 2005	1 session
	March 15, 2005	1 session

Sixteen (16) Hearing sessions @ \$1,125.00/session = \$18,000.00

Hearing Dates:	March 21, 2005	2 sessions
	March 22, 2005	2 sessions
	March 23, 2005	2 sessions
	March 24, 2005	2 sessions
	March 25, 2005	2 sessions
	April 7, 2005	2 sessions

April 8, 2005 2 sessions
April 9, 2005 2 sessions

Total Forum Fees = \$23,625.00

The Panel has assessed the total forum fees of \$23,625.00 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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$23,625.00
Total Fees	= \$28,825.00
<u>Less Payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$23,625.00

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

ARBITRATION PANEL

Harold A. Greene, Esq.	-	Public Arbitrator, Presiding Chairperson
Burton L. Ansell, Esq.	-	Public Arbitrator
Carl J. Hegner	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/
Harold A. Greene, Esq.
Public Arbitrator, Presiding Chairperson

April 14, 2005
Signature Date

NASD Dispute Resolution

Arbitration No. 04-02376

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/s/

Burton L. Ansell, Esq.
Public Arbitrator

April 14, 2005

Signature Date

/s/

Carl J. Hegner
Non-Public Arbitrator

April 14, 2005

Signature Date

April 15, 2005

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

APR. 14. 2005 12:50PM

NASD REGULATIONS

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April 8, 2005

2 sessions

April 9, 2005

2 sessions

Total Forum Fees**= \$23,625.00****The Panel has assessed the total forum fees of \$23,625.00 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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary**Claimant is solely liable for:****Initial Filing Fee****= \$ 300.00****Total Fees****= \$ 300.00****Less Payments****= \$ 300.00****Balance Due NASD Dispute Resolution****= \$ 0.00****Respondent is solely liable for:****Member Fees****= \$ 5,200.00****Forum Fees****= \$23,625.00****Total Fees****= \$28,825.00****Less Payments****= \$ 5,200.00****Balance Due NASD Dispute Resolution****= \$23,625.00**

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ARBITRATION PANEL**Harold A. Greene, Esq.**

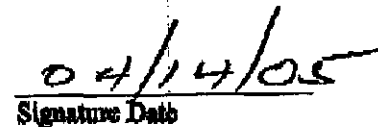
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Public Arbitrator, Presiding Chairperson**Burton L. Ansell, Esq.**

"

Public Arbitrator**Carl J. Hegner**

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Non-Public Arbitrator**Concurring Arbitrators' Signatures****Harold A. Greene, Esq.****Public Arbitrator, Presiding Chairperson****Signature Date**

APR 14 2005 12:46PM

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NO. 707 P. 6

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Burton L. Ansell
Burton L. Ansell, Esq.
Public Arbitrator

04/14/05
Signature Date

Carl J. Hegner
Non-Public Arbitrator

Signature Date

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

APR. 14. 2005 3:06PM

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Dorton L. Ansell, Esq.
Public Arbitrator

Signature Date



Carl J. Hegner
Non-Public Arbitrator

4-14-05

Signature Date

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