

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mark and Bertha Kapetanakis (Claimants) v. Merrill Lynch Pierce Fenner & Smith, Inc.,
Rittenhouse Financial Services, Inc., and Douglas Lee Chin (Respondents)

Case Number: 04-02411

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Associated Person, Member

REPRESENTATION OF PARTIES

Claimants Mark Kapetanakis ("M. Kapetanakis") and Bertha Kapetanakis ("B. Kapetanakis") hereinafter collectively referred to as "Claimants": Jenice L. Malecki, Esq., The Law Office of Jenice L. Malecki, New York, NY.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Douglas Lee Chin ("Chin"): William J. Manning, Jr., Esq., Loeb and Loeb, New York, NY.

Respondent Rittenhouse Financial Services, Inc., ("Rittenhouse"): J. Kevin McCall, Esq., Jenner & Block, Chicago, IL.

CASE INFORMATION

Statement of Claim filed on or about: April 6, 2004.

M. Kapetanakis signed the Uniform Submission Agreement: March 19, 2004.

B. Kapetanakis signed the Uniform Submission Agreement: March 19, 2004.

Joint Statement of Answer filed by Merrill Lynch and Chin on or about: July 12, 2004.

Merrill Lynch signed the Uniform Submission Agreement: July 6, 2004.

Chin did not sign the Uniform Submission Agreement.

Statement of Answer filed by Rittenhouse on or about: September 3, 2004.

Rittenhouse signed the Uniform Submission Agreement: August 26, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; misrepresentations; omissions of fact; failure to supervise; negligence, and suitability. The causes of action relate to investment in Merrill Lynch's mutual funds and fees generated from a fee based account.

Unless specifically admitted in their Answer, Merrill Lynch and Chin denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$96,435.16, compounded interest at the rate of 9%, attorney's fees in the amount of \$42,577.61, punitive damages and costs.

Respondents Merrill Lynch and Chin requested dismissal of the Statement of Claim and that they be awarded attorney's fees, costs, and other relief as the panel may deem just and proper.

Respondent Rittenhouse requested that Claimants' claims be dismissed outright for failure to state a claim.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Chin did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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

AWARD

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

1. Respondents Merrill Lynch and Chin are jointly and severally liable for and shall pay to Claimants \$72,634.40 in compensatory damages plus interest at the rate of 9% per annum accruing from April 6, 2004 until the award is paid in full.
2. Respondent Rittenhouse is liable for and shall pay to Claimants \$7,024.13 in compensatory damages plus interest at the rate of 9% per annum accruing from April 6, 2004 until the award is paid in full.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to 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	= \$ 225.00
--------------------------	-------------

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. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc., is a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 14, 15, 16, 17, 2005, adjournment by Chin = Waived

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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) Decision on discovery-related motion on the papers
with (1) arbitrator @ \$200.00 = \$ 200.00

Respondent Rittenhouse submitted (1) discovery-related motion

Four (4) Pre-hearing sessions with Panel @ \$750.00 per session = \$ 3,000.00

Pre-hearing conferences:

December 13, 2004	1 session
January 7, 2005	1 session
August 11, 2005	1 session
December 12, 2005	1 session

Ten (10) Hearing sessions @ \$750.00 per session = \$ 7,500.00

Hearing Dates:

December 6, 2005	2 sessions
December 7, 2005	2 sessions
December 8, 2005	2 sessions
December 9, 2005	2 sessions
April 17, 2006	2 sessions

Total Forum Fees = \$ 10,700.00

The Panel has assessed \$10,700.00 of the forum fees against Respondent Merrill Lynch.

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.

1. Claimants requested duplication of 22 tapes @ \$15.00 per tape	= \$ 330.00
2. Rittenhouse requested duplication of 22 tapes @ \$15.00 per tape	= \$ 330.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Administrative Fee</u>	= \$ 330.00
Total Fees	= \$ 555.00
<u>Less payments</u>	= \$ 975.00
Refund due Claimants	= \$ 420.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	= \$10,700.00
Total Fees	= \$14,250.00
<u>Less payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$10,700.00

3. Respondent Rittenhouse is solely liable for:

<u>Administrative Fee</u>	= \$ 330.00
Total Fees	= \$ 330.00
<u>Less payments</u>	= \$ 330.00
Balance Due NASD Dispute Resolution	= \$ 0.00

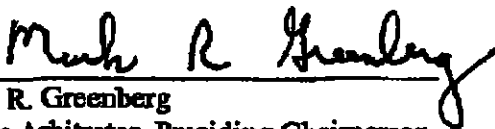
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Mark R. Greenberg	-	Public Arbitrator, Presiding Chairperson
Harold Webb, Esq.	-	Public Arbitrator
Deborah A. Jackson, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Mark R. Greenberg
Public Arbitrator, Presiding Chairperson

5/1/06

Signature Date

Harold Webb, Esq.
Public Arbitrator

Signature Date

Deborah A. Jackson, Esq.
Non-Public Arbitrator

Signature Date

May 2, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Mark R. Greenberg	-	Public Arbitrator, Presiding Chairperson
Harold Webb, Esq.	-	Public Arbitrator
Deborah A. Jackson, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Mark R. Greenberg
Public Arbitrator, Presiding Chairperson

Signature Date



Harold Webb, Esq.
Public Arbitrator

5-02-06

Signature Date

Deborah A. Jackson, Esq.
Non-Public Arbitrator

Signature Date

May 2, 2006
Date of Service (For NASD Dispute Resolution use only)