
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Eudaldo Suarez
Silvia Suarez

Case Number: 04-03034

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Richard Spinale

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Eudaldo Suarez and Silvia Suarez, hereinafter collectively referred to as "Claimants": Jerome A. Pivnik, Esq., Pivnik & Nitsche, P.A., Miami, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): David Richan, Esq. and Craig Glasser, Esq., Baritz & Colman LLP, New York, New York and Boca Raton, Florida.

Respondent Richard Spinale ("Spinale") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 2004.

Claimants signed the Uniform Submission Agreement: April 19, 2004.

Statement of Answer filed by Respondent Merrill Lynch on or about: August 9, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 16, 2004.

Respondent Spinale did not file a Statement of Answer or a signed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: 1) negligence; 2) violation of Florida Statutes, §517.301; and, 3) breach of fiduciary duty. The causes of action relate to the purchase of various mutual funds in Claimants' accounts including, but not limited to, Munder Future Technology Fund, Alliance Premier Growth Fund Class C, Van Kempen Aggressive Growth Fund Class C, Internet Port 2000 Sec A Funds and Technology 2000 Series A Funds.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$174,266.00, commissions, punitive damages in the amount of \$300,000.00, interest, attorney's fees and costs.

Respondent Merrill Lynch requested that the Statement of Claim be dismissed in its entirety, with prejudice, a specific finding that it is the prevailing party with regard to any claims under Florida Statutes, §517 in order to reserve the right to seek attorneys' fees pursuant to Florida Statutes, §517.211(6) from a court of competent jurisdiction, an award of costs and such further relief as this Panel deemed just and proper. Respondent Merrill Lynch requested attorneys' fees at the final hearing.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Spinale did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

Respondent Spinale did not appear, in person, at the evidentiary hearing, however, a deposition of his testimony was presented to the Panel. Upon review of the file, the representations made by/on behalf of Claimants and the deposition, the Panel determined that Respondent Spinale had been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of this matter would proceed without said Respondent present, in accordance with the Code.

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

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:

Respondents are found not liable and Claimants' claim is dismissed in its entirety, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and attorneys' fees, Respondent Merrill Lynch's request for attorneys' fees and the parties' requests for relief pursuant to Florida Statutes, §517, are 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 = \$ 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 person at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

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 cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: June 15, 2005 1 session	
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: October 6, 2004 1 session	
Three (3) Hearing sessions with the Panel @ \$1,125.00	= \$3,375.00
Hearing Dates: July 11, 2005 2 sessions	
July 12, 2005 1 session	
Total Forum Fees	= \$4,950.00

The Panel has assessed \$2,475.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$2,475.00 of the forum fees to 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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,475.00
Total Fees	= \$ 2,775.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,350.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,475.00
Total Fees	= \$ 7,675.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,475.00

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

ARBITRATION PANEL

Harold S. Stern, Esq.	-	Public Arbitrator, Presiding Chairperson
Franz C. Thame	-	Public Arbitrator
Edwin J. Slovitt, CLU, ChFC	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Harold S. Stern, Esq.
Public Arbitrator, Presiding Chairperson

07/13/05
Signature Date

/s/
Franz C. Thame
Public Arbitrator

07/13/05
Signature Date

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/s/
Edwin J. Slovitt, CLU, ChFC
Non-Public Arbitrator

07/13/05
Signature Date

07/14/05
Date of Service (For NASD Dispute Resolution office use only)

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- Public Arbitrator, Presiding Chairperson

- Public Arbitrator

- Non-Public Arbitrator

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Harold S. Stern, Esq.

Public Arbitrator, Presiding Chairperson

7/13/05
Signature Date

Franz C. Thame
Public Arbitrator

Signature Date

FROM : NASD

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Harold S. Stern, Esq.
 Public Arbitrator, Presiding Chairperson

Signature Date


Franz C. Thame
 Franz C. Thame
 Public Arbitrator

Franz C. Thame 7/12/05
 Signature Date

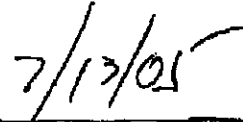
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Edwin J. Slovitt, CLU, ChFC
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