
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Suzan J. Shoshan

Case Number: 04-03074

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

John Ury

Melvin Schoen

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Suzan J. Shoshan, hereinafter referred to as "Claimant": Scott L. Silver, Esq., Blum and Silver, LLP, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), John Ury ("Ury"), and Melvin Schoen ("Schoen") hereinafter collectively referred to as "Respondents": Terry R. Weiss, Esq., Avi Stadler, Esq. and Scott Sherman, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: March 25, 2004.

Statement of Answer filed by Respondents on or about: July 20, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 15, 2004.

Respondent Ury signed the Uniform Submission Agreement: July 13, 2004.

Respondent Schoen signed the Uniform Submission Agreement: July 15, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: 1) common law fraud; 2) misrepresentation; 3) omission of fact; 4) negligence; 5) violation of industry standards; 6) violation of NASD and NYSE rules; 7) failure to supervise; 8) unsuitability; and, 9) breach of fiduciary duty. The causes of action relate to Claimant's investments in, including, but not limited to, AOL, Analog Devices, Oracle, I2 Technologies, Siebel Systems and WorldCom.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) all trades were suitable and authorized by Claimant; 2) Claimant's claims are barred by applicable statutes of limitations and by ratification, waiver, laches,

unclean hands and estoppel; and, 3) Respondents maintained an adequate and reasonable system of supervision and control over its employees.

RELIEF REQUESTED

Claimant requested the following: 1) compensatory damages of approximately \$175,000.00; 2) interest; 3) reasonable market return; 4) rescission; 5) unspecified punitive damages; 6) costs; and, 7) such other relief as is just and proper.

Respondents requested that the Panel: 1) reject Claimant's Statement of Claim in its entirety; and, 2) order all forum fees be borne by Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 5, 2005, the parties notified NASD Dispute Resolution ("NASD") that they had settled this matter.

On or about December 14, 2005, 2005, the parties' filed a proposed Stipulated Award.

Prior to the hearing, the parties fully and finally settled all claims by and between them. Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

AWARD

After considering the pleadings, the stipulation of the parties, and NASD Rule 2130, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The parties have amenablely resolved their differences and have requested this Stipulated Award;

All claims against Respondents Merrill Lynch, Ury and Schoen are dismissed, with prejudice;

The parties stipulated and agreed that the accounts at issue were managed by third-party money managers. Accordingly, the parties requested that the panel make affirmative findings and order expungement of all references to the above-captioned arbitration from the registration records maintained by the NASD Central Registration Depository ("CRD") for Respondents Ury and Schoen, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents John Ury and Melvyn Schoen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Based on the parties' request, the panel finds, pursuant to NASD Notice to Members 4-16, that Respondents Ury and Schoen were not involved in the alleged sales practice violations. The Panel therefore recommends the expungement of all references to the above-captioned arbitration from the CRD of Respondents Ury and Schoen.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the panel has made the following affirmative findings of fact:

The registered persons were not involved in the alleged investment-related sales practice violation.

The parties shall bear their respective costs, including attorneys' fees, except as fees are specifically addressed below.

Any and all claims for relief not specifically address herein, including punitive damages, are denied in their 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
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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 Merrill Lynch is a party and a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

The December 13 – 16, 2005 hearings were adjourned by a joint request from the parties.

The Panel has assessed an adjournment fee of \$562.50 to Claimant.

The Panel has assessed an adjournment fee of \$562.50 to Respondent Merrill Lynch.

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:

There were no three-day cancellation fees assessed during the proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: December 17, 2004 1 session	
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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 to Respondents, jointly and severally.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$ 562.50
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 1,425.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$5,200.00
<u>Adjournment Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$5,762.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 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

Kalman J. Lester
Robert A. Sauerberg
Peter A. Savarese, Esq.

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kalman J. Lester
Public Arbitrator, Presiding Chairperson

December 16, 2005
Signature Date

Robert A. Sauerberg
Public Arbitrator

December 16, 2005
Signature Date

Peter A. Savarese, Esq.
Non-Public Arbitrator

December 19, 2005
Signature Date

December 19, 2005
Date of Service (For NASD Dispute Resolution office use only)

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 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

Kalman J. Lester
Robert A. Sauerberg
Peter A. Savarese, Esq.

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Kalman J. Lester
Public Arbitrator, Presiding Chairperson

12/16/05
Signature Date

Robert A. Sauerberg
Public Arbitrator

Signature Date

Peter A. Savarese, Esq.
Non-Public Arbitrator

Signature Date

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

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

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Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kalman J. Lester
Public Arbitrator, Presiding Chairperson

Signature Date



Robert A. Sauerberg
Public Arbitrator

12/16/05

Signature Date

Peter A. Savarese, Esq.
Non-Public Arbitrator

Signature Date

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 562.50

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

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Kalman J. Lester
Robert A. Sauerberg
Peter A. Savarese, Esq.

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

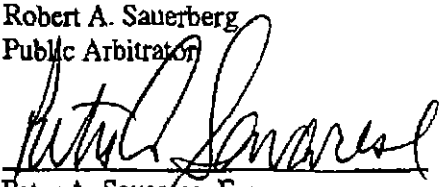
Concurring Arbitrators' Signatures

Kalman J. Lester
Public Arbitrator, Presiding Chairperson

Signature Date

Robert A. Sauerberg
Public Arbitrator

Signature Date



Peter A. Savarese, Esq.
Non-Public Arbitrator

12/19/05
Signature Date

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