
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Brian Sidella

Case Number: 04-03078

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Frederic Mannheimer
Anthony Kurlas

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Brian Sidella, hereinafter referred to as "Claimant": Scott Silver, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Frederic Mannheimer ("Mannheimer") and Anthony Kurlas ("Kurlas"), hereinafter collectively referred to as "Respondents": Thomas A. Farnen, Esq. and Aaron S. Furniss, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: April 19, 2004.

Claimant signed the Uniform Submission Agreement: April 14, 2004.

Statement of Answer filed by Respondents on or about: July 9, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 13, 2004.

Respondent Mannheimer signed the Uniform Submission Agreement: July 8, 2004.

Respondent Kurlas signed the Uniform Submission Agreement: July 21, 2004.

Motion to Strike Previous Settlement Agreements and all References to the Dinallo Affidavit filed by Respondents on or about: July 16, 2004.

Response to Motion to Strike Settlement Agreements and all References to the Dinallo Affidavit filed by Claimant on or about: August 4, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of NYSE Rule 405 and NASD Rule 2310; 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; and, 5) negligence, negligent hiring, retention and supervision. The causes of action relate to the purchase of various stocks including, but not limited to, Adelphia Business Solutions, XO Communications, America Online, ATNG Inc., Global Crossing, JDS Uniphase and Ariba in Claimant's accounts.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$300,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, costs and such other relief as this Panel deemed just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, with all forum fees to be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 14, 2004, the Panel issued an Order that granted Respondents' Motion to Strike Settlement Agreements and all References to the Dinallo Affidavit, subject to Claimant's right to prove, at the final hearing in this matter, the relevancy and admissibility of all or any part of such documents or exhibits as may relate to the facts in this case.

On October 11, 2005, Claimant notified NASD Dispute Resolution that he had dismissed Respondent Kurlas from this matter, with prejudice. Thereafter, on or about October 12, 2005, said Respondent filed with NASD Dispute Resolution a motion to have this matter expunged from his NASD Central Registration Depository (the "CRD") record

On or about October 14, 2005, Claimant advised NASD Dispute Resolution that he had settled this matter with the remaining Respondents.

On or about December 12, 2005, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award with a request for expungement of the NASD CRD record of Respondent Kurlas.

On January 18, 2006, the Panel conducted a hearing with the parties pertaining to Respondent Kurlas' expungement request. The Panel granted Respondent Kurlas' request for expungement of his NASD CRD record.

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

AWARD

After considering the pleadings, the proposed Stipulated Award with request for expungement and the hearing on the expungement request, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The parties have resolved their differences and have requested this Stipulated Award.

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

The Panel finds that, pursuant to Notice to Members 04-16 (NASD Rule 2130), Respondent Kurlas was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds.

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

Unless specifically waived in writing by 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.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, is 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 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 |
| <u>Hearing process fee</u> | <u>= \$2,750.00</u> |
| Total Member Fees | = \$5,200.00 |

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:

Cancellation fees were assessed in this matter.

Cancellation of the hearing scheduled to begin on October 18, 2005 = 300.00

The Panel has assessed \$150.00 of the cancellation fee to Claimant.

The Panel has assessed \$150.00 of the cancellation fee jointly and severally to Respondents.

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: February 1, 2005 1 session
April 20, 2005 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00 = \$2,250.00

Pre-hearing conferences: October 29, 2004 1 session
December 14, 2004 1 session

One (1) Hearing session with the Panel @ \$1,125.00 = \$1,125.00

Hearing session: January 18, 2006 1 session

Total Forum Fees = \$4,275.00

The Panel has assessed \$1,575.00 of the forum fees to Claimant.

The Panel has assessed \$2,700.00 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 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

Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Cancellation Fee = \$ 150.00

Forum Fees = \$ 1,575.00

Total Fees = \$ 2,025.00

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|-------------------------------------|---------------|
| <u>Less payments</u> | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 600.00 |

Respondent Merrill Lynch is solely liable for:

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|-------------------------------------|---------------|
| <u>Member Fees</u> | = \$ 5,200.00 |
| Total Fees | = \$ 5,200.00 |
| <u>Less payments</u> | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| <u>Cancellation Fee</u> | = \$ 150.00 |
| <u>Forum Fees</u> | = \$ 2,700.00 |
| Total Fees | = \$ 2,850.00 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 2,850.00 |

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

ARBITRATION PANEL

| | | |
|--------------------------------------|---|---|
| <i>Harvey Alan Blinksilver, Esq.</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Albert Fox</i> | - | <i>Public Arbitrator</i> |
| <i>Donald R. McGahan</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

/s/
Harvey Alan Blinksilver, Esq.
Public Arbitrator, Presiding Chairperson

01/18/06
Signature Date

/s/
Albert Fox
Public Arbitrator

01/18/06
Signature Date

/s/
Donald R. McGahan
Non-Public Arbitrator

01/18/06
Signature Date

01/19/06
Date of Service (For NASD Dispute Resolution office use only)

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1-18-06

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Albert Fox
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- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Albert Fox
Public Arbitrator

1-18-06
Signature Date

Donald R. McGahan
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To: BONNIE SIMON

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Balance Due NASD Dispute Resolution = \$ 600.00

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