
**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Thomas E. Schnabel

Case Number: 04-03493

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Barry Mordis

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Thomas E. Schnabel, hereinafter referred to as "Claimant": Scott L. Silver, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Barry Mordis ("Mordis"), hereinafter collectively referred to as "Respondents": Judith A. O'Brien, Esq. and Suzanne Bertolett, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: May 10, 2004.

Claimant signed the Uniform Submission Agreement: April 26, 2004.

Statement of Answer filed by Respondents on or about: August 5, 2004.

Respondent Merrill signed the Uniform Submission Agreement: June 29, 2004.

Respondent Mordis signed the Uniform Submission Agreement: July 20, 2004.

CASE SUMMARY

Claimant asserted the following claims: unsuitability; breach of fiduciary duty; breach of contract; common law fraud; negligence; and, negligent hiring, supervision and retention. The causes of action relate to Claimant's allegation that Respondents over-concentrated his portfolio in technology stocks, mutual funds and Merrill Lynch proprietary products.

Unless specifically admitted in their Answer, Respondents denied all allegations made in the Statement of Claim and asserted the following defenses: all trades and the overall account allocation were suitable, consistent with Claimant's stated investment objectives, and authorized by Claimant; Claimant's accounts were properly supervised; and, Claimant's claims are barred by applicable statutes of limitations and by ratification, waiver, laches, unclean hands, and estoppel.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$245,000.00, plus interest at the legal rate from the date of purchase or reasonable market return; rescission; punitive damages; the costs of this proceeding; and, such other relief as deemed just and proper.

Respondents requested an award dismissing the Statement of Claim in its entirety; directing that the registration file of Respondent Mordis be expunged of any reference to this claim; assessing all forum fees and costs against Claimant; and, granting Respondents such other, further and different relief as this Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 21, 2005, Claimant voluntarily dismissed his claim against Respondent Mordis, with prejudice and without any monetary consideration. The case then proceeded only against Respondent Merrill.

Prior to the evidentiary hearing, Claimant and Respondent Merrill fully and finally settled all claims by and between them.

On or about April 7, 2006, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for the Panel's consideration, which contained a request for the Panel to enter an Order directing NASD to expunge any reference to this arbitration from the NASD Central Registration Depository ("CRD") records of Respondent Mordis.

On or about April 10, 2006, Claimant filed with NASD Dispute Resolution a notice of settlement.

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

AWARD

After considering the pleadings and the proposed Stipulated Award submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondent Merrill have informed the Panel that they have resolved their differences and that Claimant has voluntarily dismissed his claim against Respondent Merrill, with prejudice.
2. The parties have further informed the Panel that, on October 21, 2005, Claimant voluntarily dismissed his claim against Respondent Mordis, with prejudice and without any monetary consideration. Respondent Mordis, the Merrill Lynch Financial Advisor who serviced Claimant's accounts during the period at issue in this case, was initially named as a Respondent in this case.
3. The parties state that Claimant dismissed Respondent Mordis, with prejudice, because upon reviewing the Answer and evidence produced in discovery, Claimant determined that evidence would not support a

finding of misconduct on the part of Respondent Mordis. Claimant's accounts were non-discretionary; all of the trades executed by Respondent Mordis were approved in advance by Claimant; and Respondent Mordis met and/or conversed with Claimant about his accounts on a regular basis. Accordingly, Claimant concluded that his complaint was not against the broker who serviced his accounts.

4. The parties now seek this Stipulated Award, providing that all references to the above-captioned arbitration be expunged from the NASD CRD records of Respondent Mordis.
5. The parties have stipulated and agreed that the facts of this case support the requisite findings for expungement specified below.
6. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Mordis' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Mordis must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
7. 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.
8. Based on the above stipulation and pursuant to Rule 2130, the Panel affirmatively finds that (1) the claim against Respondent Mordis, while brought in good faith, is clearly erroneous; (2) Respondent Mordis was not involved in any investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and (3) the claim against Respondent Mordis, while brought in good faith, is false.
9. Each party shall bear its respective costs, including attorneys' fees, except as fees are specifically addressed below.
10. Any and all requests for relief not specifically addressed herein, including punitive damages, are denied in its entirety.

FEES

Pursuant to the NASD Code of Arbitration Procedure ("the Code"), the following fees are assessed:

Filing Fees:

NASD 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill is a member firm and a party:

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:

There were no adjournment fees assessed during these proceedings.

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 these 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: November 24, 2004 1 session	
One (1) Decision on a discovery-related motion by a single arbitrator at \$200.00	= \$ 200.00
<u>Total Forum Fees</u>	<u>= \$1,325.00</u>

The Panel has assessed \$662.50 of the forum fees to Claimant.

The Panel has assessed \$662.50 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
Forum Fees	\$ 662.50
Total Fees	\$ 962.50
Less Payments	\$ 962.50
Balance Due NASD Dispute Resolution	\$ 0.00

Respondent Merrill is solely liable for:

Member Fees	\$5,200.00
Total Fees	\$5,200.00
Less Payments	\$5,200.00
Balance Due NASD Dispute Resolution	\$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	\$ 662.50
Total Fees	\$ 662.50
Less Payments	\$ 0.00
Balance Due NASD Dispute Resolution	\$ 662.50

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

ARBITRATION PANEL

John J. Hearn, Esq.	-	Public Arbitrator, Presiding Chairperson
J. Philip Knight	-	Public Arbitrator
G. Robert Abrams, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ _____
John J. Hearn, Esq
Public Arbitrator, Presiding Chairperson

April 21, 2006
Signature Date

/s/ _____
J. Philip Knight
Public Arbitrator

April 21, 2006
Signature Date

/s/

G. Robert Abrams, Esq.
Non-Public Arbitrator

April 20, 2006
Signature Date

April 21, 2006

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

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	\$ 300.00
<u>Forum Fees</u>	<u>\$ 662.50</u>
Total Fees	\$ 962.50
<u>Less Payments</u>	<u>\$ 962.50</u>
Balance Due NASD Dispute Resolution	\$ 0.00

Respondent Merrill is solely liable for:

<u>Member Fees</u>	<u>\$5,200.00</u>
Total Fees	\$5,200.00
<u>Less Payments</u>	<u>\$5,200.00</u>
Balance Due NASD Dispute Resolution	\$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>\$ 662.50</u>
Total Fees	\$ 662.50
<u>Less Payments</u>	<u>\$ 0.00</u>
Balance Due NASD Dispute Resolution	\$ 662.50


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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John J. Hearn, Esq.	- Public Arbitrator, Presiding Chairperson
J. Philip Knight	- Public Arbitrator
G. Robert Abrams, Esq.	- Non-Public Arbitrator

Concurring Arbitrators' Signatures

John J. Hearn, Esq.
Public Arbitrator, Presiding Chairperson



J. Philip Knight
Public Arbitrator

Signature Date

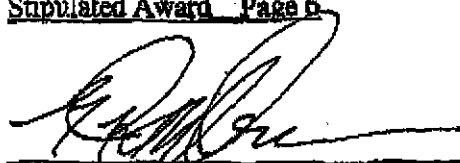
4-21-2006

Signature Date

Apr. 20. 2006 1:45PM

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G. Robert Abrams, Esq.
Non-Public Arbitrator

April 20, 2006
Signature Date

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