

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert and Jill Bowers (Claimants) vs. Merrill Lynch, Pierce, Fenner & Smith and Paul Kane (Respondents)

Case Number: 04-03526

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Robert Bowers ("R. Bowers") and Jill Bowers ("J. Bowers") hereinafter collectively referred to as "Claimants": Peter A. Perlman, Esq., Littman Krooks LLP, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith ("Merrill") and Paul Kane ("Kane") hereinafter collectively referred to as "Respondents": Victor A. Machcinski, Jr., Esq., Krebsbach & Snyder, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 13, 2004.

Claimant R. Bowers signed the Uniform Submission Agreement: May 11, 2004.

Claimant J. Bowers signed the Uniform Submission Agreement: May 11, 2004.

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

Respondent Merrill signed the Uniform Submission Agreement: October 28, 2004.

Respondent Kane signed the Uniform Submission Agreement: October 25, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, negligence, breach of contract, and failure to supervise. The causes of action relate to unspecified securities.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$318,000.00, punitive damages in the amount of \$160,000.00, attorney's fees, costs and interest.

Respondents requested that Claimant's claims be dismissed in their entirety, the expungement of

Kane's CRD records and that Respondents be awarded their fees and expenses, including forum fees and all other costs associated with the proceedings.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated February 27, 2006, Respondents requested that the Panel dismiss this matter. After due deliberation the Panel agreed to dismiss this matter upon the condition that the Order be sent to the Claimants by certified mail, and provided no objection is filed by the Claimants within 10 business days of such delivery. The matter should then be dismissed with prejudice if the Claimants failed to provide a timely objection. By letter dated May 2, 2006, Respondents advised NASD Dispute Resolution that no objection was filed by Claimants, nor has NASD Dispute Resolution received an objection to the Panel's Order, therefore this matter is dismissed with prejudice.

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

AWARD

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

1. Claimants' claims are dismissed in their entirety with prejudice.
2. 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	= \$ 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, Merrill Lynch, Pierce, Fenner & Smith is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 17, 18, 19, 2005 adjournment by Claimants	= \$1,125.00
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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) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: October 25, 2004 1 session	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$1,125.00 of the forum fees to Claimants jointly and severally.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$1,125.00
Total Fees	= \$2,550.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

2. 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


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

ARBITRATION PANEL

Howard A. Baker, Esq.	-	Public Arbitrator, Presiding Chairperson
Alexander Forti	-	Public Arbitrator
Arthur P. Fisch, Esq.	-	Non-Public Arbitrator

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.

Concurring Arbitrators' Signatures



Howard A. Baker, Esq.
Public Arbitrator, Presiding Chairperson

5-14-2006
Signature Date

Alexander Forti
Public Arbitrator

Signature Date

Arthur P. Fisch, Esq.
Non-Public Arbitrator

Signature Date

May 15, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Howard A. Baker, Esq.	-	Public Arbitrator, Presiding Chairperson
Alexander Forti	-	Public Arbitrator
Arthur P. Fisch, Esq.	-	Non-Public Arbitrator

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.

Concurring Arbitrators' Signatures

Howard A. Baker, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Alexander Forti
Public Arbitrator

5-15-06

Signature Date

Arthur P. Fisch, Esq.
Non-Public Arbitrator

Signature Date

May 15, 2006

Date of Service (For NASD Dispute Resolution use only)