

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Omar S. Jalil (Claimant) v. Merrill Lynch & Company; Merrill Lynch, Pierce, Fenner & Smith, Inc.; and Walter C. Szturma (Respondents)

Case Number: 04-03650

Hearing Site: Cleveland, Ohio

Nature of the Dispute: Customer v. Non-Member, Member, and Associated Person

REPRESENTATION OF PARTIES

Claimant Omar S. Jalil hereinafter referred to as "Claimant": Robert E. Thompson, Esq., Law Offices of Robert E. Thompson, San Francisco, CA.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Walter C. Szturma ("Szturma"), hereinafter collectively referred to as "Respondents": Alan Wopler, Esq., Sutherland, Asbill, Brennan, LLP, Atlanta, GA.

Respondent Merrill Lynch & Company did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: May 1, 2004.

Claimant signed the Uniform Submission Agreement: May 5, 2004.

Joint Statement of Answer filed by Respondents on or about: August 31, 2004.

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

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

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; fraud and deceit; misrepresentation; negligence; breach of contract; unsuitability; churning; and failure to supervise. The causes of action relate to unspecified common stock.

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

RELIEF REQUESTED

Claimant requested compensatory damages in an amount believed to exceed \$700,000.00; pre-judgment and post-judgment interest at the rate of 9% per annum, compounded annually; punitive and exemplary damages in an amount believed to be at least \$200,000.00; restitution; rescission; attorneys' fees; costs of such suit; and whatever further relief that the Panel deems proper.

Respondents requested that the Panel issue an award dismissing the Statement of Claim in its entirety; assessing all forum fees and costs against Claimant; directing that all references to this action be expunged from Respondent Szturma's individual record maintained by the Central Registration Depository; and granting Respondents such other relief as this Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Merrill Lynch & Company is not an NASD member and is not required to arbitrate in this forum, and did not submit to NASD Dispute Resolution's jurisdiction. On or about August 16, 2004, the parties stipulated that Respondent Merrill Lynch & Company would be dismissed from the arbitration.

At the hearing, Respondents moved to dismiss the claims for lack of evidence and/or for timeliness of the filing. The Panel denied the motion on timeliness grounds, but granted the motion for lack of evidence.

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 at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Respondent Szturma's request for expungement is denied.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEEES

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	= \$ 375.00
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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, Inc. is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

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:

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 3,600.00

Pre-hearing conferences:	November 10, 2004	1 session
	August 8, 2005	1 session
	August 24, 2005	1 session

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00

Hearing Dates:	September 20, 2005	2 sessions
	September 21, 2005	2 sessions
	September 22, 2005	2 sessions

Total Forum Fees = \$10,800.00

1. The Panel has assessed \$3,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees against Respondent Merrill Lynch.
3. The Panel has assessed \$3,600.00 of the forum fees against Respondent Szturma.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,975.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$10,600.00

<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

4. Respondent Szturma is solely liable for:

<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 3,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

ARBITRATION PANEL

Harlita H. Robinson, CPA	-	Public Arbitrator, Presiding Chairperson
Scott M. Shubert	-	Public Arbitrator
Dennis W. Zauszniewski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Harlita H. Robinson, CPA
Public Arbitrator, Presiding Chairperson

Signature Date

Scott M. Shubert
Public Arbitrator

Signature Date

Dennis W. Zauszniewski
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 04-03650
Award Page 5 of 5


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Signature Date



Scott M. Shubert
Public Arbitrator



Signature Date

Dennis W. Zauszniewski
Non-Public Arbitrator

Signature Date

September 29, 2005
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NASD Dispute Resolution
Arbitration No. 04-03650
Award Page 5 of 5

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Signature Date


Dennis W. Zauszniewski
Non-Public Arbitrator

9/28/05
Signature Date

September 29, 2005

Date of Service (For NASD Dispute Resolution use only)

09/27/05 16:45 FAX 2128583800

NASD REGULATION

007/007

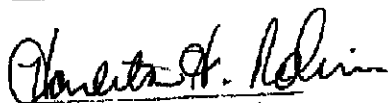
NASD Dispute Resolution
Arbitration No. 04-03650
Award Page 5 of 5

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