
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Floyd R. Hanna

Case Number: 04-03669

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
John David Clark

Hearing Site: Little Rock, Arkansas

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

REPRESENTATION OF PARTIES

For Floyd R. Hanna, hereinafter referred to as "Claimant": Charles C. Hunter, Esq., Woska & Hayes, L.L.P., Kingwood, Texas.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and John David Clark ("Clark"), hereinafter referred to as "Respondents": Joshua D. Jones, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 14, 2004.

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

Statement of Answer filed by Respondents on or about: July 21, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 23, 2004.

Respondent Clark did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: negligence, misrepresentations, controlling person liability pursuant to Section 20(a) of the Exchange Act; breach of fiduciary duty; breach of contract; failure to diversify; unsuitability; failure to supervise; failure to hedge; violation of Know Your Customer Rule; and, Violations of Securities Laws which include Securities Regulatory Rules, the Arkansas Securities Act, and common law claims. The causes of action relate to Claimant's investments in a Simplified Employee Pension account composed of class B shares of the Merrill Lynch Capital Fund, class B shares of the Merrill Lynch Fundamental Growth Fund, and shares of an unspecified Merrill Lynch proprietary mutual fund.

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

RELIEF REQUESTED

Claimant requested \$28,000.00 in compensatory damages, lost earnings, charges to the account, pre-judgment and post-judgment interest, costs, attorneys' fees, unspecified punitive damages, and all other and further relief to which Claimant may be entitled.

Respondents requested that the relief requested in the Statement of Claim be denied in all respects and that the undersigned arbitrators (the "Panel") enter an order directing the expungement of Claimant's claim from Respondent Clark's NASD Central Registration Depository ("CRD") record. Respondents also requested that the costs of the proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Clark did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about June 14, 2005, Claimant notified NASD Dispute Resolution that the parties had settled this matter.

On or about June 20, 2005, NASD Dispute Resolution closed its file in connection with this matter.

On or about July 12, 2005, the parties requested that the above-referenced matter be re-opened by the Panel solely for the purpose of ruling on a Joint Motion for Expungement. On or about July 26, 2005, Respondents filed an Unopposed Request for Expungement and a proposed Stipulated Award. On or about August 2, 2005, the Panel granted the parties' motions to re-open the case and for expungement.

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

AWARD

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

- (1) Claimant's withdrawal of his claims is accepted and Respondents are dismissed from this matter with prejudice.
- (2) To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
- (3) Other than the Forum Fees noted below, and not specifically awarded or otherwise provided for above, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

- (4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Clark's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Clark must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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	= \$ 150.00
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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	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,350.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during the 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 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 a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: May 27, 2005 1 session

One (1) Pre-hearing session with the Panel @ \$600.00/session = \$ 600.00
Pre-hearing conference: October 21, 2004 1 session

Total Forum Fees = \$1,050.00

The Panel has assessed \$525.00 of the forum fees to Claimant.

The Panel has assessed \$525.00 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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 525.00
Total Fees	= \$ 675.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 75.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$2,350.00
Total Fees	= \$2,350.00
Less payments	= \$2,350.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 525.00
Total Fees	= \$ 525.00
Less payments	= \$ 525.00
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

<i>John E. Meador, Jr.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>William Wright Willis</i>	-	<i>Public Arbitrator</i>
<i>Robert L. Lanford</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
John E. Meador, Jr.
Public Arbitrator, Presiding Chairperson

August 9, 2005
Signature Date

/s/
William Wright Willis
Public Arbitrator

August 10, 2005
Signature Date

/s/
Robert L. Lanford
Non-Public Arbitrator

August 9, 2005
Signature Date

August 11, 2005
Date of Service (For NASD Dispute Resolution office use only)

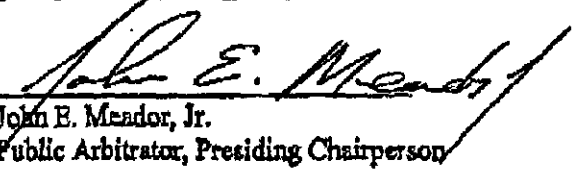
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<i>Robert L. Lanford</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



John E. Meador, Jr.
Public Arbitrator, Presiding Chairperson

8/9/05

Signature Date

William Wright Willis
Public Arbitrator

Signature Date

Robert L. Lanford
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

John E. Meador, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

William Wright Willis

William Wright Willis
Public Arbitrator

8/18/05

Signature Date

Robert L. Lanford
Non-Public Arbitrator

Signature Date

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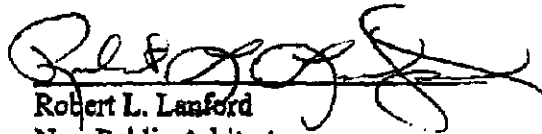
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John E. Meador, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

William Wright Willis
Public Arbitrator

Signature Date


Robert L. Lanford
Non-Public Arbitrator

8-09-05
Signature Date

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