
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-03915

Ziad M. Marjeh, M.D., individually,
as a tenant by the entireties and
as owner and beneficiary of the
Ziad Marjeh, M.D., SEP Account, and
Mary Lou Marjeh, individually and
as a tenant by the entireties

Name of the Respondent

Hearing Site: Boca Raton, Florida

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

REPRESENTATION OF PARTIES

For Ziad M. Marjeh, M.D., individually, as a tenant by the entireties and as owner and beneficiary of the Ziad Marjeh, M.D., SEP Account, and Mary Lou Marjeh, individually and as a tenant by the entireties, hereinafter collectively referred to as "Claimants": Bruce W. Barnes, Esq., Bruce W. Barnes, P.A., Clearwater, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), hereinafter referred to as "Respondent": John Fleming, Esq. and Elena C. Parent, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: June 2, 2004.

Claimants signed the Uniform Submission Agreement: May 25, 2004.

Statement of Answer filed by Respondent on or about: September 8, 2004.

Respondent MLPFS signed the Uniform Submission Agreement: September 7, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) negligence; and 4) negligent misrepresentation. The causes of action relate to Claimants' investments in, including but not limited to, shares of Harbor Florida, Internet Capital Group, Motorola, Texas Instruments and Lucent.

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

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of \$2,900,000.00; 2) costs; and 3) such further relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent requested: 1) that the Panel reject Claimants' claims in their entirety; 2) that the Panel order all costs of this arbitration proceeding to be borne by Claimants; and 3) attorneys' fees and costs, pursuant to Florida Statute 517.211(6).

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing, Respondent MLPFS made an ore tenus motion in limine to exclude Volume I, tabs 18 through 20, of the Claimants' exhibit binder. At the evidentiary hearing, the Panel denied this motion.

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

AWARD

After considering the pleadings, and 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. Respondent is liable on the claim of unsuitability and shall pay compensatory damages in the amount of \$300,000.00 to Claimants, jointly and severally.
2. Any and all claims for relief not specifically addressed herein, including Respondent's request for attorneys' fees, are 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	= \$ 600.00
--------------------------	-------------

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 MLPFS is a party and a member firm.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 30, 2005 - September 2, 2005, joint adjournment request = \$1,200.00

The Panel has assessed an adjournment fee of \$600.00 to Claimants, jointly and severally.

The Panel has assessed an adjournment fee of \$600.00 to Respondent.

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 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 a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: July 28, 2005 1 session	

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: November 11, 2004 1 session	

Eight (8) Hearing sessions with the Panel @ \$1,200.00/session	= \$ 9,600.00
Hearing Dates: December 6, 2005 2 sessions	
December 7, 2005 2 sessions	
December 8, 2005 2 sessions	
December 9, 2005 2 sessions	

Total Forum Fees	= \$11,250.00
------------------	---------------

The Panel has assessed forum fees in the amount of \$5,625.00 to Claimants, jointly and severally.

The Panel has assessed forum fees in the amount of \$5,625.00 to Respondent MLPFS.

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

Claimants are jointly and severally solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,625.00
<u>Adjournment Fee</u>	= \$ 600.00
Total Fees	= \$ 6,825.00
<u>Less payments</u>	= \$ 2,400.00
Balance Due NASD Dispute Resolution	= \$ 4,425.00

Respondent MLPFS is solely liable for:

Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 5,625.00
<u>Member Fees</u>	= \$ 8,550.00
Total Fees	= \$14,775.00
<u>Less payments</u>	= \$ 9,150.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

ARBITRATION PANEL

<i>Edward Aptaker, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Stephen Kahane, CPA</i>	-	<i>Public Arbitrator</i>
<i>R. Peter Olin</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

_____/s/_____
Edward Aptaker, Esq.
Public Arbitrator, Presiding Chairperson

12/13/05
Signature Date

_____/s/_____
Stephen Kahane, CPA
Public Arbitrator

12/13/05
Signature Date

_____/s/_____
R. Peter Olin
Non-Public Arbitrator

12/13/05
Signature Date

12/14/05
Date of Service (For NASD Dispute Resolution office use only)

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

Claimants are jointly and severally solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,625.00
<u>Adjournment Fee</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 6,825.00
<u>Less payments</u>	<u>= \$ 2,400.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,425.00

Respondent MLPFS is solely liable for:

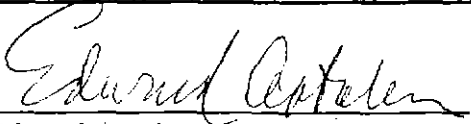
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 5,625.00
<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$14,775.00
<u>Less payments</u>	<u>= \$ 9,150.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

ARBITRATION PANEL

<i>Edward Aptaker, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Stephen Kahane, CPA</i>	-	<i>Public Arbitrator</i>
<i>R. Peter Olin</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures


Edward Aptaker, Esq.
Public Arbitrator, Presiding Chairperson

12/13/05
Signature Date

Stephen Kahane, CPA
Public Arbitrator

Signature Date

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

Claimants are jointly and severally solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,625.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 6,825.00
Less payments	= \$ 2,400.00
Balance Due NASD Dispute Resolution	= \$ 4,425.00

Respondent MLPFS is solely liable for:

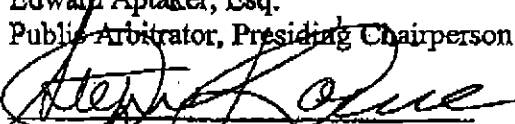
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 5,625.00
Member Fees	= \$ 8,550.00
Total Fees	= \$14,775.00
Less payments	= \$ 9,150.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

ARBITRATION PANEL

Edward Aptaker, Esq.	-	Public Arbitrator, Presiding Chairperson
Stephen Kahane, CPA	-	Public Arbitrator
R. Peter Olin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Edward Aptaker, Esq.
Public Arbitrator, Presiding Chairperson

Stephen Kahane, CPA
Public Arbitrator

Signature Date

12/13/05

Signature Date

NASD Dispute Resolution

Arbitration No. 04-03915

Award Page 5

R. Peter Olin
Non-Public Arbitrator

Signature Date 12/13/05

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