

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

David B. Noe
Patricia A. Noe

Case Number: 04-04074

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Gary M. Cohen

Hearing Site: Pittsburgh, PA

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

REPRESENTATION OF PARTIES

Claimants, David B. Noe and Patricia A. Noe, hereinafter collectively referred to as "Claimants", were represented by William J. Labovitz, Esq., Lewis & Sargent, LLC, Wellsburg, West Virginia.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Gary M. Cohen ("Cohen"), hereinafter collectively referred to as "Respondents", were represented by G. Jeffrey Boujoukos, Esq., Morgan Lewis & Bockius, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on June 9, 2004.

Claimants signed the Uniform Submission Agreement on June 3, 2004.

Statement of Answer filed by Respondents on April 16, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on July 12, 2004.

Respondent Cohen signed the Uniform Submission Agreement on August 23, 2004.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action, among others: negligent misrepresentations, breach of fiduciary duties, negligence/professional malpractice, and fraud. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: authorization, ratification, failure to state a claim upon which relief may be granted, assumption of the risk, Respondents breached no duty owed to Claimants, contributory negligence, failure to use requisite due diligence, failure to mitigate damages, failure to plead facts, and Claimants' claims are barred by the statute of limitations.

RELIEF REQUESTED

Claimants in the Statement of Claim requested compensatory and punitive damages in excess of \$12,000,000.00, interest and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Cohen's Central Registration Depository ("CRD") record.

OTHER ISSUES CONSIDERED AND DECIDED

On December 29, 2005, Claimant notified NASD Dispute Resolution that this matter had settled.

On March 2, 2006, the parties and Panel held a conference call to discuss the matter of expungement of Respondent Cohen's CRD record.

The parties 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. Claimants' claims are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Cohen's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Cohen 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 false.

3. The parties shall bear their respective costs, except as Fees are specifically addressed below;
and

4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 600.00

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 Lynch is a party.

Member surcharge = \$ 3,750.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 18-21, 2005 and October 10-13, 2005, mediation adjournments
requested by all parties waived

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: June 17, 2005 1 session
June 28, 2005 1 session

Two (2) Pre-hearing sessions with Panel @ \$ 1,200 00 = \$ 2,400.00

Pre-hearing conferences: November 29, 2004 1 session
March 2, 2006 1 session

Total Forum Fees = \$ 3,300.00

1. The Panel has assessed \$ 1,650.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 1,650.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,650.00
Total Fees	= \$ 2,250.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 450.00

2. Respondent Merrill Lynch is assessed and shall pay:

Member Fees	= \$ 10,000.00
Total Fees	= \$ 10,000.00
Less payments	= \$ 10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay:

Forum Fees	= \$ 1,650.00
Total Fees	= \$ 1,650.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,650.00

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

ARBITRATION PANEL

Marc A. Winters	- Public Arbitrator, Presiding Chairperson
Robert Charkovsky, Esq.	- Public Arbitrator, Panelist
Donald A. Olszewski	- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Marc A. Winters
Public Arbitrator, Presiding Chairperson

3/31/06
Signature Date

Donald A. Olszewski
Non-Public Arbitrator, Panelist

Signature Date

Dissenting Arbitrator's Signatures

Robert Charkovsky, Esq.
Public Arbitrator, Panelist

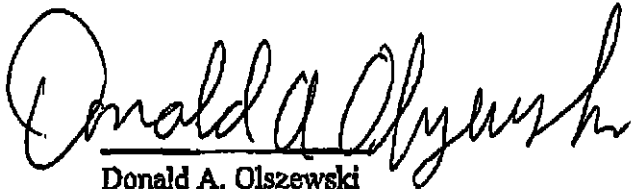
Signature Date

April 3, 2006
Date of Service (For NASD Dispute Resolution office use only)

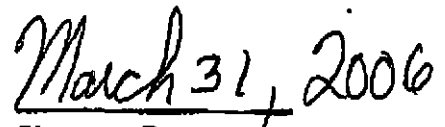
Concurring Arbitrators' Signatures

Marc A. Winters
Public Arbitrator, Presiding Chairperson

Signature Date



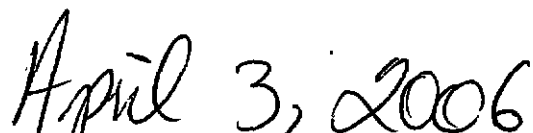
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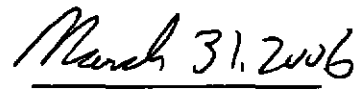
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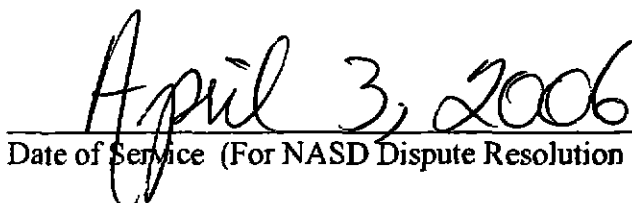
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