

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Joseph L. and Karen S. Captor

Case Number: 04-04274

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Donald S. Moyer

Hearing Site: Pittsburgh, Pennsylvania

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

REPRESENTATION OF PARTIES

Claimants, Joseph L. and Karen S. Captor, hereinafter collectively referred to as "Claimants", were represented by Arnold Y. Steinberg, Esq., Attorney at Law, Pittsburgh, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Donald S. Moyer ("Moyer"), 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 8, 2004.

Claimants submitted a signed, but undated, Uniform Submission Agreement.

Statement of Answer filed by Respondents on August 23, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on July 2, 2004.

Respondent Moyer signed the Uniform Submission Agreement on August 20, 2004.

CASE SUMMARY

Claimants, in their Statement of Claim, asserted the following causes of action, among others: violation of Section 10(b) of the Securities and Exchange Act of 1934; common law fraud and deceit; breach of fiduciary duty; and negligent supervision. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; contributory negligence; Claimants failed to use due diligence in the supervision of their accounts; failure to mitigate damages; assumption of risk; ratification; estoppel; Respondents are not fiduciaries vis-a-vis Claimants; and Claimants' claims are barred by the applicable statutes of limitations.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 480,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Other Costs	amount unspecified
Other Monetary	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed, that all records of Claimants' Statement of Claim be expunged from the Central Registration Depository ("CRD") records of Respondent Moyer, that the costs of this proceeding be assessed against Claimants, that Claimants be ordered to pay Respondents' reasonable costs and attorneys' fees, and that the Arbitration Panel (the "Panel") award Respondents such other and further relief as they deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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. Respondent Merrill Lynch shall pay Claimant compensatory damages in the amount of \$84,529.68;
2. Respondent Moyer shall pay to Claimant compensatory damages in the amount of \$12,955.59;
3. All claims for punitive damages are denied in their entirety;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein 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 = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
<u>Total Member Fees</u>	<u>= \$ 5,200.00</u>

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 session with a single arbitrator @ \$ 450.00	= \$ 900.00
Pre-hearing conferences: January 13, 2005 1 session	
May 13, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: November 29, 2004 1 session	

Six (6) Hearing sessions @ \$ 1,125.00	= \$ 6,750.00
Hearing Dates: June 20, 2005 2 sessions	
June 21, 2005 2 sessions	
June 22, 2005 2 sessions	

Total Forum Fees = \$ 8,775.00

The Panel has assessed \$ 8,775.00 of the forum fees to Respondent Merrill Lynch.

FEE SUMMARY

Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund owed to Claimants	= \$ 1,125.00

Respondent, Merrill Lynch, is assessed and shall pay:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 8,775.00
Total Fees	= \$ 13,975.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 8,775.00

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

ARBITRATION PANEL

Jared D. Simmer	-	Public Arbitrator, Presiding Chairperson
Michael R. Stabile, Jr., Esq.	-	Public Arbitrator, Panelist
Ralph L. Corton, Jr., CFA	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Jared B. Simmer
Public Arbitrator, Presiding Chairperson

7-3-05

Signature Date

Michael R. Stabile, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

Ralph L. Corton, Jr., CFA
Non-Public Arbitrator, Panelist

Signature Date

July 5, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Jared D. Simmer
Public Arbitrator, Presiding Chairperson

Signature Date

Michael R. Stabile, Jr.
Michael R. Stabile, Jr., Esq.
Public Arbitrator, Panelist

6-28-05
Signature Date

Ralph L. Corton, Jr., CFA
Non-Public Arbitrator, Panelist

Signature Date

July 5, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Jared D. Simmer
Public Arbitrator, Presiding Chairperson

Signature Date

Michael R. Stabile, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

Ralph L. Corton, Jr., CFA
Ralph L. Corton, Jr., CFA
Non-Public Arbitrator, Panelist

6/29/05
Signature Date

July 5, 2005
Date of Service (For NASD Dispute Resolution office use only)