
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Marta Eugenia Palomo TTEE U/A 2/14/84 by
Marta E. Palomo FBO Victoria Suarez-Palomo

Case Number: 04-05341

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Marta Eugenia Palomo TTEE U/A 2/14/84 by Marta E. Palomo FBO Victoria Suarez-Palomo, hereinafter referred to as "Claimant": Miguel A. Suarez, Esq., Law Office of Julio Pastoriza, Miami, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Inc., hereinafter referred to as "Respondent": David E. Bamberger, Esq., Senior Attorney with Respondent, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 26, 2004.

Claimant signed the Uniform Submission Agreement: June 8, 2004.

Answer and Motion for More Definite Statement filed by Respondent on or about: September 30, 2004.

Respondent signed the Uniform Submission Agreement: September 30, 2004.

Motion to Strike filed by Claimant on or about: March 14, 2005.

Opposition to Claimant's Motion to Strike filed by Respondent on or about: April 8, 2005.

Amended Statement of Claim filed on or about: April 27, 2005.

Answer to Amended Statement of Claim filed by Respondent on or about: August 17, 2005.

CASE SUMMARY

Claimant alleged the following causes of action: 1) negligence; 2) breach of fiduciary duty; 3) common law fraud; 4) unsuitability; 5) unsuitable, unlawful and unauthorized use of margin trading; 6) failure to supervise; and 7) fraud under the Florida Securities and Investor Protection Act, Section 517.301, Fla. Stat., and Rule 10b-5 of the

Securities Exchange Act of 1934. The causes of action relate to the use of margin and purchases of stocks, including Qualcomm, Oracle, America Online, EMC Corp., Corning, Cisco Systems, and Martin Marietta.

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

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in excess of \$158,000.00; 2) punitive damages in the amount of \$700,000.00; 3) rescission and restitution; 4) attorneys' fees; 5) costs; and 6) interest.

Respondent requested: 1) dismissal of Claimant's Statement of Claim, as amended, with prejudice; 2) costs and expenses of this proceeding, including forum fees; 3) attorneys' fees; and 4) such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 18, 2005, the undersigned arbitrators (the "Panel") granted Respondent's Motion for More Definite Statement of Claim and directed Claimant to file an Amended Statement of Claim.

On or about April 14, 2005, the Panel denied Claimant's Motion to Strike.

On or about May 4, 2006, the Panel denied Respondent's opposed Motion to File Post Hearing Briefs.

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, 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 claims of unsuitability and failure to supervise and shall pay to Claimant compensatory damages in the amount of \$48,874.00, plus interest at the rate of 4.5% per annum which shall accrue from April 27, 2005 until payment of the Award.
2. Claimant's requests for punitive damages and attorneys' fees are denied.
3. Respondent's request for attorneys' fees is denied.
4. Any and all claims for relief not specifically addressed herein, including Claimant's claim under Section 517.301, Florida Statutes, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 375.00

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 is a party and a member firm.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 12-13, 2005, adjourned by Claimant. The Panel assessed an adjournment fee in the amount of \$1,200.00 to Claimant.

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 incurred 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 per session = \$ 450.00

Pre-hearing conference: October 20, 2005 1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00 per session = \$ 1,200.00
Pre-hearing conference: February 18, 2005 1 session

Four (4) Hearing Sessions @ \$1,200.00 per session = \$ 4,800.00
Hearing sessions: April 25, 2006 2 sessions
April 26, 2006 2 sessions

Total Forum Fees = \$ 6,450.00

The Panel assessed forum fees in the amount of \$3,225.00 to Claimant.

The Panel assessed forum fees in the amount of \$3,225.00 to Respondent.

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 are 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	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 3,225.00</u>
Total Fees	= \$ 4,800.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,225.00

Respondent is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 3,225.00</u>
Total Fees	= \$10,225.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,225.00

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

ARBITRATION PANEL

Robert A. Sauerberg	-	Public Arbitrator, Presiding Chairperson
Lee E. Karofsky, JD	-	Public Arbitrator
Benham Fuhrman, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
Robert A. Sauerberg
Public Arbitrator, Presiding Chairperson

May 11, 2006
Signature Date

_____/s/_____
Lee E. Karofsky, JD
Public Arbitrator

May 11, 2006
Signature Date

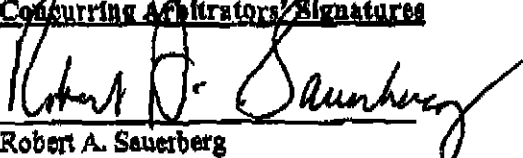
Benham Fuhrman, CFP
Non-Public Arbitrator

Signature Date

May 12, 2006
Date of Service (For NASD Dispute Resolution office use only)

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Robert A. Sauerberg
Public Arbitrator, Presiding Chairperson

5/11/06
Signature Date

Lee E. Karofsky, JD
Public Arbitrator

Signature Date

Benham Fuhrman, CFP
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