
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Alberta Bove

Case Number: 04-05359

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Karl Seitz

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Alberta Bove, hereinafter referred to as "Claimant": Scott L. Silver, Esq., Blum & Silver, LLC, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Karl Seitz ("Seitz"), hereinafter collectively referred to as "Respondents": Alex J. Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: July 27, 2004.

Claimant signed the Uniform Submission Agreement: March 17, 2004.

Statement of Answer and Third Party Claim filed by Respondents on or about: October 4, 2004.

Respondent MLPFS signed the Uniform Submission Agreement: August 12, 2004.

Respondent Seitz signed the Uniform Submission Agreement: August 16, 2004.

CASE SUMMARY

Claimant alleged the following causes of action: 1) violation of industry rules, including but not limited to, NYSE Rule 405 and NASD Conduct Rule 2310; 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; 5) negligence; and 6) negligent hiring, retention and supervision by Respondent MLPFS. The causes of action relate to investments in various shares of stock, including but not limited to, Utstartcom, Inc., Barnesandnoble.com and Cybersource Corp., and various shares of mutual funds, including but not limited to, Seligman Communications & Information Fund, Franklin Small Cap Growth Fund and Blackrock Large Cap Growth Fund.

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

RELIEF REQUESTED

Claimant requested: 1) compensatory damages of approximately \$700,000.00; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) rescission; 4) punitive damages; 5) costs; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal, with prejudice, of the Statement of Claim in its entirety; 2) costs associated with the arbitration proceeding be assessed against Claimant, or alternatively, that the Panel enter an award, as asserted in the Third-Party Claim, for contribution and indemnification for any and all damages and costs assessed against Respondents; and 3) expungement of all reference to the above captioned arbitration from Respondent Seitz's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 4, 2004, Respondents filed a Third Party Claim against a non-member of NASD for indemnification and contribution. The non-member did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the Third Party Claim.

On or about March 17, 2005, Claimant filed with NASD Dispute Resolution a notice of settlement of the above captioned arbitration proceeding.

On or about March 17, 2005, Respondents filed with NASD Dispute Resolution a notice of settlement of all claims, including its Third Party Claim.

Prior to the October 18, 2005 evidentiary hearing, the Parties fully and finally settled all claims by and between them.

On or about September 19, 2005, the parties filed a Joint Motion to Reopen File and Enter Stipulated Award.

On January 11, 2006, the Panel conducted a telephonic evidentiary hearing to consider the parties' Joint Motion to Reopen File and Enter Stipulated Award, including an order to expunge this matter from the NASD CRD records of Respondent Seitz. The Panel granted the parties' request to enter an order to expunge this case from the CRD records of Respondent Seitz. In connection with this decision, the Panel determined that Respondent Seitz had not engaged in or committed any sales practice violation as alleged in the Statement of Claim filed by Claimant Bove. The Panel directed NASD Dispute Resolution to notify the parties to file their proposed Stipulated Award by January 26, 2006.

On or about January 25, 2006, the parties filed an Unopposed Motion to Enter Stipulated Award and their proposed Stipulated Award for the Panel's consideration and approval.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings, the Joint Motion to Reopen File and Enter Stipulated Award, Unopposed Motion to Enter Stipulated Award and proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents MLPFS and Seitz are dismissed with prejudice. Claimant and Respondent MLPFS have entered into a confidential settlement agreement, which shall be complied with by the parties.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Seitz's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Seitz 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, the Panel has made the following affirmative findings of fact:

Respondent Seitz was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

3. Each party shall bear its own costs and expenses associated with the above-referenced arbitration.
4. Respondent MLPFS shall bear the costs associated with the telephonic evidentiary hearing on the request to enter the Stipulated Award.
5. Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 |
| Third Party claim filing fee | = \$1,250.00 |

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 MLPFS is a member firm and a party.

| | |
|----------------------------|---------------------|
| Member surcharge | = \$2,250.00 |
| Pre-hearing process fee | = \$ 750.00 |
| <u>Hearing process fee</u> | <u>= \$4,000.00</u> |
| Total Member Fees | = \$7,000.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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 the Panel @ \$1,200.00 per session | = \$1,200.00 |
| Pre-hearing conference: January 6, 2005 1 session | |
| One (1) Hearing session @ \$1,200.00 per session | = \$1,200.00 |
| Hearing Date: January 11, 2006 1 session | |
| Total Forum Fees | = \$2,400.00 |

The Panel has assessed forum fees in the amount of \$600.00 to Claimant and \$600.00 to Respondent Seitz for the pre-hearing conference held on January 6, 2005.

Pursuant to the agreement of the parties, the Panel has assessed forum fees in the amount of \$1,200.00 to Respondent MLPFS for the hearing session held on January 11, 2006.

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 | = \$ 375.00 |
| Forum Fees | = \$ 600.00 |
| Total Fees | = \$ 975.00 |
| Less payments | = \$ 975.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent MLPFS is solely liable for:

| | |
|-------------------------------------|--------------|
| Third Party Claim Filing Fee | = \$1,250.00 |
| Member Fees | = \$7,000.00 |
| Forum Fees | = \$1,200.00 |
| Total Fees | = \$9,450.00 |
| Less payments | = \$8,250.00 |
| Balance Due NASD Dispute Resolution | = \$1,200.00 |

Respondent Seitz is solely liable for:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 600.00 |
| Total Fees | = \$ 600.00 |
| Less payments | = \$ 600.00 |
| 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>William J. Callahan, CPA</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Camille Besold</i> | - | <i>Public Arbitrator</i> |
| <i>Bernard (Bob) L. Loring</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

/s/ _____
William J. Callahan, CPA
Public Arbitrator, Presiding Chairperson

February 1, 2006
Signature Date

/s/

Camille Besold
Public Arbitrator

January 31, 2006

Signature Date

/s/

Bernard (Bob) L. Loring
Non-Public Arbitrator

January 31, 2006

Signature Date

February 3, 2006

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

NASD Dispute Resolution
Arbitration No. 04-05359
Stipulated Award Page 5

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 | = \$ 375.00 |
| Forum Fees | = \$ 600.00 |
| Total Fees | = \$ 975.00 |
| Less payments | = \$ 975.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent MLPFS is solely liable for:

| | |
|-------------------------------------|--------------|
| Third Party Claim Filing Fee | = \$1,250.00 |
| Member Fees | = \$7,000.00 |
| Forum Fees | = \$1,200.00 |
| Total Fees | = \$9,450.00 |
| Less payments | = \$8,250.00 |
| Balance Due NASD Dispute Resolution | = \$1,200.00 |

Respondent Seitz is solely liable for:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 600.00 |
| Total Fees | = \$ 600.00 |
| Less payments | = \$ 600.00 |
| 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

William J. Callahan, CPA
Camille Besold
Bernard (Bob) L. Loring

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Wm J Callahan
William J. Callahan, CPA
Public Arbitrator, Presiding Chairperson

2-1-06
Signature Date

NASD Dispute Resolution
Arbitration No. 04-05359
Stipulated Award Page 6

Camille Besold

Camille Besold
Public Arbitrator

1-31-06

Signature Date

Bernard (Bob) L. Loring
Non-Public Arbitrator

Signature Date

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

Camille Besold
Public Arbitrator

Signature Date


Bernard (Bob) L. Loring
Non-Public Arbitrator

JAN. 31, 2006
Signature Date

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