

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Harold Spizer, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Linda Lee Flower, and Gregory Lee Leahy, Respondents

Case Number: 04-05562

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

William S. Bonnheim, Esq.
William S. Bonnheim, PLC
Palm Desert, California

For Respondents:

William J. Manning, Jr., Esq.
Loeb & Loeb LLP
New York, New York

Marcela L. Cuadrado, Esq.
Loeb & Loeb LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 5, 2004

Claimant's Uniform Submission Agreement signed: June 18, 2004

Joint Statement of Answer filed by Respondents: October 8, 2004

CASE SUMMARY

Claimant alleged failure to supervise, breach of fiduciary duty, unsuitability, violation of federal and state securities laws, violation of NASD Rules of Fair Practice and NYSE rules, elder abuse, and unfair or deceptive practices against senior citizens. Claimant's claims involved unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$290,900.10 in compensatory damages, all profits to Respondents including commissions and fees, prejudgment interest at the statutory rate, and costs including attorney's fees and expert fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Linda Lee Flower, and Gregory Lee Leahy did not file with NASD Dispute Resolution properly executed submission agreements, but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On November 17, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On October 26, 2005, Claimant notified NASD that the parties had reached a settlement and Claimant dismissed Respondents Linda Lee Flower and Gregory Lee Leahy with prejudice.

On October 31, 2005, Respondents filed a Motion for Order Recommending Expungement of Respondent Gregory Leahy's and Linda Lee Flower's Registration Record Maintained by the NASD Central Registration Depository ("CRD"). Claimant did not oppose this motion.

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 parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents have entered into a confidential settlement agreement.
2. a. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Linda Lee Flower's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Linda Lee Flower must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

b. 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.

c. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

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

3. a. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gregory Lee Leahy's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Gregory Lee Leahy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

b. 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.

c. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

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

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: January 26, 2005 1 session	

Total Forum Fees	= \$ 1,125.00
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1. The Panel assessed \$562.50 of the forum fees to Claimant.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$(1,425.00)
Refund Due Claimant	= \$(562.50)

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

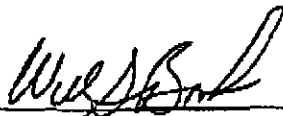
Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
Less payments made by Respondent	
<u>Merrill Lynch, Pierce, Fenner & Smith Incorporated</u>	= \$(4,250.00)
Refund Due Merrill Lynch, Pierce, Fenner & Smith Incorporated	= \$(3,687.50)

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

Parties' Signatures



Counsel for Claimant
Harold Spizer

11/11/15
Date

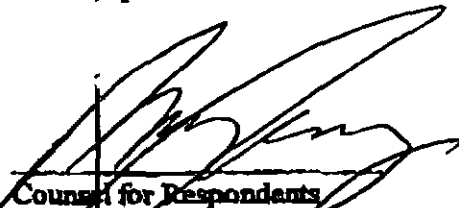
Counsel for Respondents
Merrill Lynch, Pierce, Fenner & Smith Incorporated,
Linda Lee Flower, and Gregory Lee Leahy

Date

Parties' Signatures

Counsel for Claimant
Harold Spizer

Date


Counsel for Respondents
Merrill Lynch, Pierce, Fenner & Smith Incorporated,
Linda Lee Flower, and Gregory Lee Leahy

Date

11/14/05

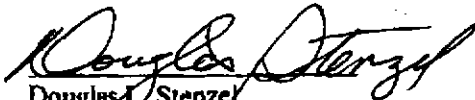
WILLIAM T. MANNING JR

ARBITRATION PANEL

Douglas L. Stenzel
George L. Tindall
Jeffrey E. Skogsbergh

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Douglas L. Stenzel
Chair, Public Arbitrator

11/16/05
Signature Date

George L. Tindall
Public Arbitrator

Signature Date

Jeffrey E. Skogsbergh
Non-Public Arbitrator

Signature Date

11/17/05
Date of Service

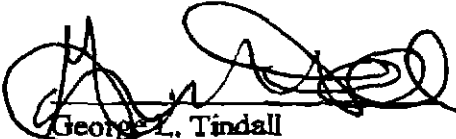
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Public Arbitrator

11/15/05

Signature Date

Jeffrey E. Skogsbergh
Non-Public Arbitrator

Signature Date

11/17/05

Date of Service

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Signature Date

George L. Tindall
Public Arbitrator

Signature Date



Jeffrey E. Skogsbergh
Non-Public Arbitrator

11/16/2005
Signature Date

11/17/05
Date of Service