
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-05752

Geraldine E. Rust

Randall W. Rust, Custodian for Geraldine E. Rust

Names of the Respondents

Hearing Site: Atlanta, Georgia

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Michael R. Crossett

Marion Moore

D.H. Rice

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

REPRESENTATION OF PARTIES

For Geraldine E. Rust and Randall W. Rust, Custodian for Geraldine E. Rust, hereinafter referred to as "Claimants": Nicholas A. Dodys, Esq., Law Offices of Nicholas A. Dodys, Atlanta, Georgia.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Michael R. Crossett ("Crossett"), Marion Moore ("Moore") and D.H. Rice ("Rice"), hereinafter referred to as "Respondents": Thomas A. Farnen, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: July 9, 2004.

Claimants signed the Uniform Submission Agreement: July 8, 2004.

Statement of Answer filed by Respondents on or about: October 6, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: September 2, 2004.

Respondent Crossett signed the Uniform Submission Agreement: October 18, 2004.

Respondent Moore signed the Uniform Submission Agreement: September 23, 2004.

Respondent Rice signed the Uniform Submission Agreement: September 23, 2004.

Motion to Exclude Claimants from Introducing Documents and Evidence and Motion to Dismiss filed by Respondents on or about: September 2, 2005.

Response to Motion to Exclude and Motion to Dismiss filed by Claimants on or about: September 9, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: 1) failure to supervise; 2) negligence; 3) common law fraud; 4) failure to deal in good faith; 5) breach of contract; 6) violation of NASD Rule 2310; 7) intentional infliction of emotional distress; 8) violation of the Georgia Unfair Business Practices Act; 9) failure to supervise,

violation of NASD Rule 3010; and, 10) breach of fiduciary duty. The causes of action relate to the purchase of various, unspecified convertible bonds in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondents asserted that the investments in Claimants' accounts were suitable. Additionally, Respondents asserted that Claimants' claims were barred by applicable statutes of limitations and by ratification, waiver, laches, unclean hands and estoppel. Furthermore, Respondents stated that there was an adequate and reasonable system of supervision and control over employees.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$250,000.00, interest, costs and attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety, assessment of all forum fees and costs against Claimants, plus an award of attorneys' fees and such other, further and different relief as this Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On October 3, 2005, during a telephonic hearing, the parties informed the Panel that they had settled this matter. Pursuant to this, the Panel issued an Order stating that the parties had settled and that they would be submitting a proposed Stipulated Award for the Panel's review.

On or about November 10, 2005, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award with a request for expungement of the NASD Central Registration Depository (the "CRD") records of Respondents Crossett, Moore and Rice.

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

AWARD

After considering the pleadings and the proposed Stipulated Award with request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are dismissed from this matter, with prejudice.

Based on the stipulation of the parties and pursuant to Rule 2130 of the NASD Code of Arbitration Procedure (the "Code") and NASD Notice to Members 4-16, the Panel finds that Respondents Crossett, Moore and Rice were not involved in the alleged sales practice violations and that the claims against said Respondents are impossible or clearly erroneous.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Crossett, Moore and Rice's registration records maintained by the NASD CRD, with the understanding that

pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Crossett, Moore and Rice must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by 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.

The parties shall bear their respective costs, including attorney's fees, except as fees are specifically addressed below.

Any and all claims for relief not specifically addressed herein, are denied.

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
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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, Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were 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

Adjournment Fees

Request for adjournment was filed in this matter.

June 7 – 10, 2005 – adjournment requested by Claimants	= \$1,125.00
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The Panel has assessed the total adjournment fee in the amount of \$1,125.00 jointly and severally to Claimants.

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:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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	= \$ 450.00
Pre-hearing conference: March 16, 2005 1 session	
Five (5) Pre-hearing sessions with the Panel @ \$1,125.00	= \$5,625.00
Pre-hearing conferences: December 20, 2004 1 session	
March 10, 2005 1 session	
April 29, 2005 1 session	
August 9, 2005 1 session	
October 3, 2005 1 session	
Total Forum Fees	= \$6,075.00

The Panel has assessed \$3,037.50 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$3,037.50 of the forum fees jointly and severally to Respondents.

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.

Administrative costs were incurred during this proceeding:

Non-sufficient funds check fee:	= \$ 15.00
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The total administrative fee of \$15.00 is assessed jointly and severally to Claimants.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Administrative Fee	= \$ 15.00
<u>Forum Fees</u>	<u>= \$ 3,037.50</u>
Total Fees	= \$ 4,477.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,477.50

Respondent Merrill Lynch is solely liable for:

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 3,037.50
<u>Total Fees</u>	= \$ 3,037.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 3,037.50

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

ARBITRATION PANEL

<i>Patrick Emery Longan, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Ralph S. Paden</i>	-	<i>Public Arbitrator</i>
<i>Marshall H. Lichtenstein, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Patrick Emery Longan, Esq.
Public Arbitrator, Presiding Chairperson

12/02/05
Signature Date

/s/
Ralph Paden
Public Arbitrator

11/18/05
Signature Date

/s/
Marshall H. Lichtenstein, Esq.
Non-Public Arbitrator

11/21/05
Signature Date

12/02/05
Date of Service (For NASD Dispute Resolution office use only)

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Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
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<i>Ralph S. Paden</i>	-	<i>Public Arbitrator</i>
<i>Marshall H. Lichtenstein, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Patrick E. Longan

Patrick Emery Longan, Esq.
 Public Arbitrator, Presiding Chairperson

December 2, 2005

Signature Date

Ralph Paden
 Public Arbitrator

Signature Date

Marshall H. Lichtenstein, Esq.
 Non-Public Arbitrator

Signature Date

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Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
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<i>Ralph S. Paden</i>	-	<i>Public Arbitrator</i>
<i>Marshall H. Lichtenstein, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Patrick Emery Longan, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Ralph Paden
Ralph Paden
Public Arbitrator

Nov. 18, 2005
Signature Date

Marshall H. Lichtenstein, Esq.
Non-Public Arbitrator

Signature Date

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

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Arbitration No. 04-05752
Stipulated Award Page 5

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Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 3,037.50
<u>Total Fees</u>	= \$ 3,037.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 3,037.50

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ARBITRATION PANEL

Patrick Emery Longan, Esq.

Ralph S. Paden

Marshall H. Lichtenstein, Esq.

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Patrick Emery Longan, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

Ralph Paden

Public Arbitrator

Signature Date

Marshall H. Lichtenstein

Marshall H. Lichtenstein, Esq.

Non-Public Arbitrator

11/21/05

Signature Date

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