

Stipulated Award

NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kenneth Kaplan and Lois Kaplan (Claimants) vs. Merrill Lynch Pierce Fenner & Smith, Inc., Audrey Kurtzman, George Sula, and David April (Respondents)

Case Number: 04-05839

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Kenneth Kaplan ("K. Kaplan") and Lois Kaplan ("L. Kaplan"), hereinafter collectively referred to as "Claimants": Hayward Richard Pressman, Esq., Attorney at Law, New York, NY. Previously represented by Diane Mall Sammarco, Esq., Pressman & Trien, New York, NY.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc., ("Merrill"), Audrey Kurtzman ("Kurtzman"), George Sula ("Sula"), and David April ("April"), hereinafter collectively referred to as "Respondents": Dimitri Nemirovsky, Esq., Bingham, McCutchen, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 17, 2004.

K. Kaplan signed the Uniform Submission Agreement: August 17, 2004.

L. Kaplan signed the Uniform Submission Agreement: August 17, 2004.

Joint Statement of Answer filed by Respondents on or about: October 28, 2004.

Merrill signed the Uniform Submission Agreement: October 28, 2004.

Kurtzman signed the Uniform Submission Agreement: November 11, 2004.

Sula signed the Uniform Submission Agreement: November 11, 2004.

April signed the Uniform Submission Agreement: December 1, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability, violations of Section 10(b) of the Exchange Act and Rule 10b-5, common law fraud, breach of fiduciary duty, failure to supervise, and control person liability. The causes of action relate to the purchase of unspecified equities on margin.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$1,200,000.00, representing Claimants' out of pocket losses, including margin interest, punitive damages in the amount of \$2,000,000.00, costs, disbursements, and attorneys' fees.

Respondents requested dismissal of the Statement of Claim in its entirety, an award directing Claimants to pay all forum fees, costs, reasonable attorneys' fees, and such other and further and different relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 6, 2006, the parties entered into a settlement agreement. The parties requested that a Stipulated Award be issued.

The Panel conducted a telephonic hearing on July 31, 2006 so the parties could present evidence on Respondent Sula, April, and Kurtzman's requests for expungement. After due deliberation, the Panel denied the request for expungement.

Respondents filed a motion for an in person evidentiary hearing for the Panel to reconsider the request for expungement. The Panel determined that Respondents should brief their position as to why they meet the expungement criteria under Rule 2130; Respondents submitted this brief on or about November 15, 2006.

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

The parties entered into an agreement to present to the Panel a Stipulated Award. Upon motion of both parties for an entry of an award, the written stipulation thereto, and after considering the pleadings, the testimony and evidence presented at the July 31, 2006 hearing, and Respondents' November 15, 2006 brief, the Panel grants, in part, the motion and enters this award granting the following relief:

1. Claimants' claims are hereby dismissed with prejudice in their entirety.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent George Sula's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent George Sula must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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

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

3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David April's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent David April must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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

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

4. Respondent Kurtzman's request for expungement is denied.

5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

| | |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 600.00 |
|--------------------------|-------------|

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch Pierce Fenner & Smith, Inc. is a party.

| | |
|----------------------------|----------------------|
| Member Surcharge | = \$ 2,800.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| <u>Hearing Process Fee</u> | <u>= \$ 5,000.00</u> |
| Total Member Fees | = \$ 8,550.00 |

Adjournment Fees

The following adjournment fees are assessed:

October 24-26, November 1-2, 2005 adjournment requested by Claimants = WAIVED

February 14-6, 27-28, 2006 adjournment requested by Respondents
Respondent Merrill Lynch's share = \$ 1,200.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session
= \$ 1,200.00

Pre-hearing conference: January 20, 2005 1 session

One (1) Hearing session with the Panel @ \$1,200.00/session = \$ 1,200.00

Hearing Date: July 31, 2006 1 session

Total Forum Fees = \$ 2,400.00

1. The parties have agreed that the forum fees associated with the January 20, 2005 pre-hearing conference shall be assessed as follows:
 - a. Claimants, jointly and severally, have been assessed \$240.00 of the forum fees.
 - b. Respondent Merrill has been assessed \$240.00 of the forum fees.
 - c. Respondent Kurtzman has been assessed \$240.00 of the forum fees.
 - d. Respondent Sula has been assessed \$240.00 of the forum fees.
 - e. Respondent April has been assessed \$240.00 of the forum fees.
2. The Panel assessed the forum fees associated with the July 31, 2006 hearing as follows:
 - a. Respondents are jointly and severally liable for \$1,200.00 of the forum fees.

Fee Summary

1. Claimants are jointly and severally liable for:

| | |
|----------------------|---------------|
| Initial Filing Fee | = \$ 600.00 |
| Forum Fees | = \$ 240.00 |
| Total Fees | = \$ 840.00 |
| Less payments | = \$ 1,800.00 |
| Refund Due Claimants | = \$ 960.00 |

2. Respondent Merrill is solely liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 8,550.00 |
| Adjournment Fee | = \$ 1,200.00 |
| Forum Fees | = \$ 240.00 |
| Total Fees | = \$ 9,990.00 |
| Less payments | = \$ 8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 1,440.00 |

3. Respondent Kurtzman is solely liable for:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 240.00 |
| Total Fees | = \$ 240.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 240.00 |

4. Respondent Sula is solely liable for:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 240.00 |
| Total Fees | = \$ 240.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 240.00 |

5. Respondent April is solely liable for:

| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 240.00 |
| Total Fees | = \$ 240.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 240.00 |

6. Respondents Merrill, Sula, April, and Kurtzman are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$ 1,200.00 |
| Total Fees | = \$ 1,200.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 1,200.00 |

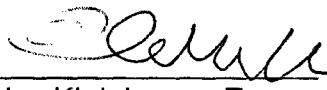
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | | |
|-------------------------|---|--|
| Charles Kleinbaum, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Judith C. Zerden, Esq. | - | Public Arbitrator |
| Steven J. Petrie | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Charles Kleinbaum, Esq.
Public Arbitrator, Presiding Chairperson

1/4/07

Signature Date

Judith C. Zerden, Esq.
Public Arbitrator

Signature Date

Steven J. Petrie
Non-Public Arbitrator

Signature Date

January 22, 2007

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Charles Kleinbaum, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Judith C. Zerden, Esq.
Public Arbitrator



Signature Date

Steven J. Petrie
Non-Public Arbitrator

Signature Date

January 22, 2007
Date of Service (For NASD office use only)

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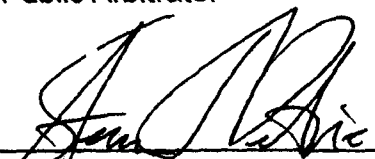
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Charles Kleinbaum, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Judith C. Zerden, Esq.
Public Arbitrator

Signature Date



Steven J. Petrie
Non-Public Arbitrator

12/30/06

Signature Date

January 22, 2007
Date of Service (For NASD office use only)