

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Richard M. Clyne, an individual and as Trustee of The Robert M. Clyne Trust, Mary T. Clyne, as Trustee of the The Mary T. Clyne Trust, and Stella Clyne, an individual,
Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and William A. Cecil,
Respondents

Case Number: 04-06137

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Arthur S. Leider
Investors Arbitration Specialists
San Diego, California

For Respondents:

Robert Ericson, Esq.
Bingham McCutchen
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 27, 2004

Claimants Richard M. Clyne, an individual and as Trustee of The Robert M. Clyne Trust, Mary T. Clyne, as Trustee of the The Mary T. Clyne Trust's Joint Uniform Submission Agreement signed: August 25, 2004

Claimant Stella Clyne's Uniform Submission Agreement signed: January 3, 2007

Joint Statement of Answer filed by Respondents: November 24, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: September 20, 2004

Respondent William A. Cecil's Uniform Submission Agreement signed:
December 2, 2004

CASE SUMMARY

Claimants alleged breach of contract, breach of fiduciary duty, unsuitability, unauthorized trading, fraud, misrepresentation and omissions, negligence, violation of federal and state securities laws, and failure to supervise. Claimants' allegations involve transactions in securities, including but not limited to Enron, Calpine, and Tyco.

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

RELIEF REQUESTED

Claimants requested in excess of \$1,000,000.00 in compensatory damages, unspecified exemplary and punitive damages, interest, and costs.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety and expungement of all reference to the above-captioned arbitration from Respondent William A. Cecil's registration records maintained by the NASD Central Registration Depository.

OTHER ISSUES CONSIDERED AND DECIDED

On September 22, 2004, Claimants 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 waivers of the Claimants 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 January 10, 2007, the parties stipulated to adding Stella Clyne as a Claimant to the case. The Panel accepted the stipulation.

On January 22, 2007, Claimants moved the Panel to amend the Prayer for Damages in their Statement of Claim as follows: compensatory damages in the amount of \$415,709.00; punitive damages in the sum of \$250,000.00; interest on the Award at the legal rate of 10% from the date of filing until payment; waiver of all NASD forum fees and request for refund of all hearing session deposits; expert witness fees in the sum of \$7,200; reasonable representation fees; and such other relief as the panel may deem just and proper. Respondents did not oppose the amendment. After due consideration, the Panel granted Claimants' Motion to Amend.

On January 24, 2007, Respondents made a Motion to Strike Exhibit Three of Claimants' Arbitration Brief. Claimants filed a response on the same date. After due consideration during the hearing, the Panel granted Respondents' Motion to Strike. 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted, including Claimants' request for exemplary and punitive damages and Respondents' request for expungement of above-captioned arbitration from Respondent William A. Cecil's registration records, is denied.

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	= \$ 375.00
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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 that 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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

Adjournment Fees

The following adjournment fees are assessed:

September 27 – 30, 2005 adjournment requested by the parties	= \$ 1,200.00
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June 6 – 9, 2006 adjournment requested by the parties	= \$ 1,500.00
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The Panel waived the fees for both the September 27 – 30, 2005 and June 6 – 9, 2006 adjournments requests of the parties.

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
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Pre-hearing conferences:	January 26, 2005	1 session
	August 16, 2005	1 session

Eleven (11) Hearing sessions @ \$1,200.00/session	= \$13,200.00
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Hearings:	November 14, 2006	2 sessions
	November 15, 2006	2 sessions

November 16, 2006	2 sessions
November 17, 2006	2 sessions
January 26, 2007	2 sessions
January 27, 2007	1 session

Total Forum Fees	= \$15,600.00
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1. The Panel assessed \$7,800.00 of the forum fees jointly and severally to Claimants Richard M. Clyne, Stella Clyne, The Robert M. Clyne Trust, and The Mary T. Clyne Trust.
2. The Panel assessed \$7,800.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and William A. Cecil.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested twelve (12) copies of audio tapes @ \$15.00 each:	= \$ 180.00
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Respondents requested thirteen (13) copies of audio tapes @ \$15.00 each:	= \$ 195.00
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Respondents requested thirty-five (35) photocopies @ \$0.25 each:	= \$ 8.75
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Fee Summary

1. Claimants Richard M. Clyne, Stella Clyne, The Robert M. Clyne Trust, and The Mary T. Clyne Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 7,800.00
Administrative Costs	= \$ 180.00
Total Fees	= \$ 8,355.00
Less payments	= \$(1,755.00)
Balance Due NASD Dispute Resolution	= \$ 6,600.00

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

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and William A. Cecil are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 7,800.00
Administrative Costs	= \$ 203.75
Total Fees	= \$ 8,003.75
Less payments by Merrill Lynch	= \$ (195.00)
Balance Due NASD Dispute Resolution	= \$ 7,808.75

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.

ARBITRATION PANEL

Robert A. Lombardi	-	Public Arbitrator, Presiding Chair
Seymour Schoen	-	Public Arbitrator
Blaine Smith	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert A. Lombardi
Robert A. Lombardi
Chair, Public Arbitrator

JAN 29, 2007
Signature Date

Seymour Schoen
Public Arbitrator

Signature Date

Blaine Smith
Non-Public Arbitrator

Signature Date

1/31/07
Date of Service

ARBITRATION PANEL

Robert A. Lombardi	-	Public Arbitrator, Presiding Chair
Seymour Schoen	-	Public Arbitrator
Blaine Smith	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert A. Lombardi
Chair, Public Arbitrator

Signature Date

Seymour Schoen

Seymour Schoen
Public Arbitrator

1-30-2007
Signature Date

Blaine Smith
Non-Public Arbitrator

Signature Date

1/31/07
Date of Service

ARBITRATION PANEL

Robert A. Lombardi	-	Public Arbitrator, Presiding Chair
Seymour Schoen	-	Public Arbitrator
Blaine Smith	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert A. Lombardi
Chair, Public Arbitrator

Signature Date

Seymour Schoen
Public Arbitrator

Signature Date



Blaine Smith
Non-Public Arbitrator

2-1-07

Signature Date

Date of Service