

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Bill and Nancy Weakley and Don and Catherine Carpenter (Claimants) v. Merrill Lynch Pierce Fenner & Smith, Inc., Kevin Cox, and Joe Vinciguerra (Respondents)

Case Number: 04-07383

Hearing Site: Columbus, Ohio

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

REPRESENTATION OF PARTIES

Claimants Bill Weakley ("B. Weakley"), Nancy Weakley ("N. Weakley") Don Carpenter ("D. Carpenter"), Catherine Carpenter ("C. Carpenter") hereinafter collectively referred to as "Claimants": Thomas C. Wagner, Esq., Van Deusen & Wagner, LLC, Cleveland, OH.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill"), Kevin Cox ("Cox"), and Joe Vinciguerra ("Vinciguerra") hereinafter collectively referred to as "Respondents": Ari H. Jaffe, Esq., Kohrman Jackson & Krantz, LLC, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: October 14, 2004.

Claimant B. Weakley signed the Uniform Submission Agreement: August 31, 2004.

Claimant N. Weakley signed the Uniform Submission Agreement: August 31, 2004.

Claimant D. Carpenter signed the Uniform Submission Agreement: September 7, 2004.

Claimant C. Carpenter signed the Uniform Submission Agreement: September 7, 2004.

Joint Statement of Answer and Motion to Dismiss filed by Respondents Merrill, Cox, and Vinciguerra on or about: January 31, 2005.

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

Respondent Cox signed the Uniform Submission Agreement: February 14, 2005.

Respondent Vinciguerra signed the Uniform Submission Agreement: February 11, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitable investment advice, breach of contract, misrepresentation, failure to supervise, negligence, and breach of fiduciary duty. The causes of action relate to unspecified mutual funds.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$300,000.00, punitive damages, costs, and attorneys' fees.

Respondents requested that the Panel dismiss the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 1, 2005, the Panel reviewed Respondents' Motion to Dismiss dated January 31, 2005. After due deliberation, the Panel denied said Motion.

At the hearing, Respondents moved to dismiss the Statement of Claim because the claim was not filed within the applicable statute of limitations and because the Claimants failed to prove their case. After due deliberation, the Panel denied both motions.

The parties have 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kevin Cox's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Kevin Cox 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 arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joe Vinciguerra's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Joe Vinciguerra 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 arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is false.

4. 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

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 Panel @ \$1,125.00 = \$ 1,125.00

Pre-hearing conference: April 12, 2005 1 session

Nine (9) Hearing sessions @ \$1,125.00 = \$10,125.00

Hearing Dates: November 14, 2005 2 sessions

November 15, 2005 2 sessions

November 16, 2005 2 sessions

November 17, 2005 1 session

November 18, 2005 2 sessions

Total Forum Fees = \$11,250.00

1. The Panel has assessed \$11,250.00 of the forum fees to Merrill.

Fee Summary

1. Claimants are jointly and severally liable for

Initial Filing Fee = \$ 300.00

Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Refund Due Claimants	= \$ 1,125.00

2. Respondent Merrill is solely liable for:

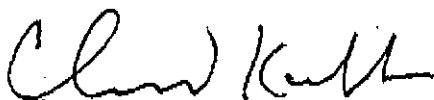
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$11,250.00</u>
Total Fees	= \$16,450.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$11,250.00

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

ARBITRATION PANEL

Charles W. Kohler, Esq.	-	Public Arbitrator, Presiding Chairperson
Barbara E. Dixon	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Charles W. Kohler, Esq.
Public Arbitrator, Presiding Chairperson

11-28-05
Signature Date

Barbara E. Dixon
Public Arbitrator

Signature Date

Bert Cliff
Non-Public Arbitrator

Signature Date

NOVEMBER 28, 2005
Date of Service (For NASD Dispute Resolution use only)

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Barbara E. Dixon	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

11/23/05
Signature Date

Bert Cliff
Non-Public Arbitrator

Signature Date

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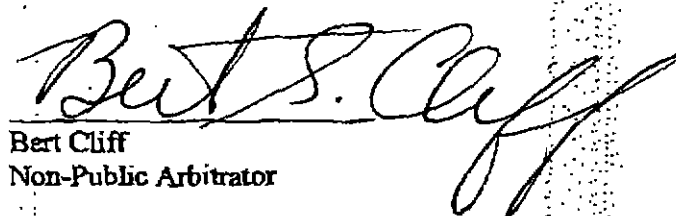
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