

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Patricia Sagawa (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Alan Conklin, Sr. (Respondents)

Case Number: 04-07518

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimant Patricia Sagawa ("Sagawa") hereinafter referred to as "Claimant": Paul K. Stecker, Esq., Phillips Lytle, LLP, Buffalo, NY.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Edward Alan Conklin, Sr. ("Conklin") hereinafter collectively referred to as "Respondents": John C. Kelly, Esq., McCarter & English, LLP, Newark, NJ.

CASE INFORMATION

Statement of Claim filed on or about: October 26, 2004.

Claimant signed the Uniform Submission Agreement: October 21, 2004.

Joint Statement of Answer filed by Respondents on or about: January 19, 2005.

Respondent Merrill Lynch signed the Uniform Submission Agreement: November 15, 2004.

Respondent Conklin signed the Uniform Submission Agreement: January 19, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; breach of fiduciary duty; and violation of NASD "suitability" Rule 2310. The causes of action relate to unspecified common stocks and 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

Claimant requested compensatory damages in the amount of \$802,058.00; prejudgment interest;

reasonable attorneys' fees; and other costs and expenses.

Respondents requested that the Panel dismiss Claimant's claims in their entirety; that all forum fees and costs be assessed against Claimant; and that the Panel award such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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. Respondent Merrill Lynch is liable for and shall pay compensatory damages to Claimant in the amount of \$186,457.00.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Edward Alan Conklin, Sr.'s registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Edward Alan Conklin, Sr. 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 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is factually impossible or clearly erroneous as to Edward Alan Conklin, Sr.
3. Any and all relief not specifically addressed herein is denied.

DISSENTING ARBITRATOR'S REPORT

Arbitrator Nichols concurs with the award of expungement and dissents from the remainder of the Award.

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 = \$375.00

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 person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 4, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: February 2, 2005 1 session	

Six (6) Hearing sessions @ \$1,200.00	= \$7,200.00
Hearing Dates: May 3, 2005 2 sessions	
May 4, 2005 2 sessions	
May 5, 2005 2 sessions	

Total Forum Fees	= \$8,850.00
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1. The Panel has assessed \$4,425.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,425.00 of the forum fees against Respondent Merrill Lynch.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 4,425.00
Total Fees	= \$ 4,800.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,225.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 4,425.00
Total Fees	= \$11,425.00
<u>Less payments</u>	= \$ 5,250.00
Balance Due NASD Dispute Resolution	= \$ 6,175.00

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

ARBITRATION PANEL

Krista Gottlieb, Esq.	-	Public Arbitrator, Presiding Chairperson
F. Harris Nichols, Esq.	-	Public Arbitrator
Anthony Vitanza	-	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.



Krista Gottlieb, Esq.
Public Arbitrator, Presiding Chairperson

5-23-05

Signature Date

Anthony Vitanza
Non-Public Arbitrator

Signature Date

Concurring in Part, Dissenting in Part Arbitrator's Signature

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.

F. Harris Nichols, Esq.
Public Arbitrator

Signature Date

MAY 25, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

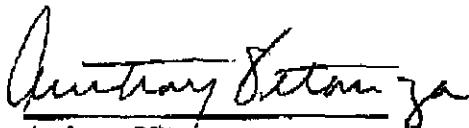
Krista Gottlieb, Esq.	-	Public Arbitrator, Presiding Chairperson
F. Harris Nichols, Esq.	-	Public Arbitrator
Anthony Vitanza	-	Non-Public Arbitrator

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Krista Gottlieb, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Anthony Vitanza
Non-Public Arbitrator

5/19/05
Signature Date

Concurring in Part, Dissenting in Part Arbitrator's Signature

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.

F. Harris Nichols, Esq.
Public Arbitrator

Signature Date

MAY 25, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Krista Gottlieb, Esq.	-	Public Arbitrator, Presiding Chairperson
F. Harris Nichols, Esq.	-	Public Arbitrator
Anthony Vitanza	-	Non-Public Arbitrator

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Krista Gottlieb, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Anthony Vitanza
Non-Public Arbitrator

Signature Date

Concurring in Part, Dissenting in Part Arbitrator's Signature

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.

F. Harris Nichols
F. Harris Nichols, Esq.
Public Arbitrator

May 24, 2005
Signature Date

May 25, 2005
Date of Service (For NASD Dispute Resolution use only)