

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Howard Comart, Loretta Comart, David Liebowitz, Scott L. Fleischer Trust U/A DTD, Paige A. Liebowitz Trust U/A DTD, Andrew R. Liebowitz Trust U/A DTD, Stephanie Fleischer Trust U/A DTD (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith Inc., Michael Rosenthal, Stanley Rosenthal, and Lee Ann Quenault (Respondents)

Case Number: 05-00203

Hearing Site: New York, New York

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

Associated Persons vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants Howard Comart ("H. Comart"), Loretta Comart ("L. Comart"), David Liebowitz ("Liebowitz"), Scott L. Fleischer Trust U/A DTD ("Scott Fleischer"), Paige A. Liebowitz Trust U/A DTD ("Paige Liebowitz"), Andrew R. Liebowitz Trust U/A DTD ("Andrew Liebowitz"), Stephanie Fleischer Trust U/A DTD ("Stephanie Fleischer"), hereinafter collectively hereinafter referred to as "Claimants": J. Anklowitz, Esq., Law Office of J. Anklowitz, Bohemia, NY.

Respondents Michael Rosenthal ("M. Rosenthal") and Stanley Rosenthal ("S. Rosenthal"): Jerome M. Selvers, Esq., Sonneblick, Parker and Selvers, Freehold, NJ.

Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), and Lee Ann Quenault ("Quenault"): Frank J. Cuccio, Esq., Bressler, Amery & Ross, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 13, 2005.

Claimant H. Comart signed the Uniform Submission Agreement: January 2, 2005.

Claimant L. Comart signed the Uniform Submission Agreement: January 2, 2005.

Claimant Liebowitz signed the Uniform Submission Agreement: January 2, 2005.

Claimant Scott Fleischer signed the Uniform Submission Agreement: January 2, 2005.

Claimant Paige Liebowitz signed the Uniform Submission Agreement: January 2, 2005.

Claimant Andrew Liebowitz signed the Uniform Submission Agreement: January 2, 2005.

Claimant Stephanie Fleischer signed the Uniform Submission Agreement: January 2, 2005.

Joint Answer to the Statement of Claim and Cross-Claim filed by Respondents M. Rosenthal and S. Rosenthal on or about: April 22, 2005.

M. Rosenthal signed the Uniform Submission Agreement: April 21, 2005.

S. Rosenthal signed the Uniform Submission Agreement: April 21, 2005.
Joint Answer to the Statement of Claim filed by Respondents Merrill Lynch and Quenault on or about: April 26, 2005.
Joint Answer to the Cross-Claim filed by Quenault and Merrill Lynch on or about: May 6, 2005.
Merrill Lynch signed the Uniform Submission Agreement: August 1, 2005.
Quenault did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: over concentration; breach of contract; unsuitability; negligence; fraud; misrepresentation; breach of fiduciary duty; failure to supervise, and omission of facts. The causes of action relate to the purchase of Munder Netnet Fund Class B and other unspecified technology stocks.

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

In their Cross-Claim, Respondents M. and S. Rosenthal asserted the following cause of action: indemnification.

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

Unless specifically admitted in their Joint Answer to the Cross-Claim, Respondents Merrill Lynch and Quenault denied the allegations made in the Cross Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$492,398.88, interest, punitive damages, attorneys' fees and costs and all other damages awarded by the Panel.

Respondents M. Rosenthal and S. Rosenthal requested that Claimants' claims be dismissed in their entirety.

In their Cross-Claim, M. and S. Rosenthal requested unspecified damages.

Respondents Merrill Lynch and Quenault requested that Claimants' claims be dismissed in their entirety.

Respondent Merrill Lynch requested that M. and S. Rosenthal's Cross-Claim be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Quenault did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim is bound by the determination of the Panel on all issues submitted.

On or about May 9, 2006, arbitrator Sandra Parker withdrew from the Panel; the parties agreed to proceed with only two arbitrators.

On or about May 15, 2005, the parties settled the initial claim and Cross-Claim and submitted this Stipulated Award for the Panel's review.

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. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed in their entirety.
2. Respondent M. and S. Rosenthal's Cross-Claim is dismissed in their entirety.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Lee Ann Quenault's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Lee Ann Quenault 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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
Cross-Claim filing fee	= \$ 250.00

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 or each decision rendered on a discovery-related motion on the papers. 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) Decision on discovery-related motion on the papers
with (1) one arbitrator @ \$200.00 = \$ 200.00
Respondents M. and S. Rosenthal submitted (1) discovery-related motion

Two (2) Pre-hearing conference sessions with the Chairperson @ \$450.00 per session
Pre-hearing conferences: April 3, 2006 1 session = \$ 900.00
May 1, 2006 1 session

One (1) Pre-hearing conference session with Panel @ \$1,125.00 per session
Pre-hearing conference: July 27, 2005 1 session = \$ 1,125.00
Total Forum Fees = \$ 2,225.00

1. The Panel has assessed \$741.66 of the forum fees, jointly and severally, to the Claimants.
2. The Panel has assessed \$741.66 of the forum fees, jointly and severally, to Respondents M. and S. Rosenthal.
3. The Panel has assessed \$741.66 of the forum fees, jointly and severally, to Respondents Merrill Lynch and Quenault.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
<u>Total Fees</u>	= \$ 1,425.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Pursuant to the Rule 10332 of the Code of Arbitration Procedure, NASD-DR will retain the \$1,125.00 hearing session because this case settled within eight days of the first scheduled hearing.

2. 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
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents M. and S. Rosenthal are jointly and severally liable for:

<u>Cross Claim Filing Fee</u>	= \$ 250.00
<u>Forum Fees</u>	= \$ 1,000.00
<u>Total Fees</u>	= \$ 1,250.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Pursuant to the Rule 10332 of the Code of Arbitration Procedure, NASD-DR will retain the \$1,000.00 hearing session because this case settled within eight days of the first scheduled hearing.

4. Respondents Merrill Lynch and Quenault are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 741.66
<u>Total Fees</u>	= \$ 741.66
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 741.66

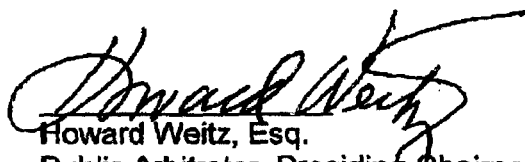
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Howard Weitz, Esq.	-	Public Arbitrator, Presiding Chairperson
Paul R. Walsh, Esq.	-	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.


Howard Weitz, Esq.
Public Arbitrator, Presiding Chairperson

9/19/06
Signature Date

Paul R. Walsh, Esq.
Non-Public Arbitrator

Signature Date

October 3, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

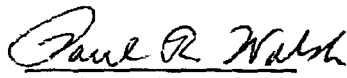
Howard Weitz, Esq.	-	Public Arbitrator, Presiding Chairperson
Paul R. Walsh, Esq.	-	Non-Public Arbitrator

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.

Howard Weitz, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date


Paul R. Walsh, Esq.
Non-Public Arbitrator

10/3/2006
Signature Date