

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Samuel A. Stornelli and Anne E. Stornelli, JTWROS, Samuel A. Stornelli, IRRA and Samuel A. Stornelli (Claimants) v. Merrill Lynch, Pierce, Fenner and Smith, Inc. (Respondent)

Case Number: 05-00422

Hearing Site: Buffalo, New York

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

Claimants Samuel A. Stornelli and Anne E. Stornelli, JTWROS, Samuel A. Stornelli, IRRA and Samuel A. Stornelli, hereinafter collectively referred to as "Claimants" appeared *pro se*.

Respondent Merrill Lynch, Pierce, Fenner, and Smith, Inc. hereinafter referred to as "Respondent": Theodore R. Snyder, Esq., Krebsbach & Snyder, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 24, 2005.

Claimants signed the Uniform Submission Agreement: January 18, 2005.

Statement of Answer filed by Respondent on or about: April 12, 2005.

Respondent signed the Uniform Submission Agreement: February 17, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; failure to supervise; misrepresentation, non-disclosures; omission of facts and suitability. The causes of action relate to various high tech stocks.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$509,325.00 and interest at a rate of five percent (5%) per annum.

Respondent requested that Claimants' claims be dismissed in their entirety and that the costs of this arbitration be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 29, 2005, Respondent filed a Motion to Dismiss. After due deliberation, the Panel granted the Motion to Dismiss.

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.

PANEL's DETERMINATION

After due study and evaluation of the evidence presented before it, the Panel unanimously finds that Respondent's Motion for Dismissal is persuasive and warranted based upon the facts and evidence submitted.

Claimants have failed to make a prima facie case to demonstrate that they have suffered some type of harm in regard to specific accounts or stocks that they hold with their broker and Merrill Lynch research, or specific Merrill Lynch recommendations that were fraudulent or inappropriate to their accounts.

The Claimants have further undermined the viability of their Statement of Claim through their own statements during the process. The statement above having no complaint with the handling of their Merrill Lynch accounts for approximately 20 years constitutes an admission against interest and underscores Respondent's contention that there is not, nor ever has been, any valid claim regarding specific actions or inactions of Merrill Lynch in dealing with their accounts. The second statement where the Claimants assert that their only claim in the Arbitration is the question about whether Merrill Lynch Investment Banking and Merrill Lynch Security Analyst Group colluded to contribute to and exacerbate the price collapse that occurred with specific issues during the bear market 2000 through 2002, also clearly indicates that there is no specific claim regarding their accounts or specific actions on the part of Merrill Lynch in dealing with their accounts. This represents a nebulous and global claim that is well outside the purview of the Arbitration Panel.

Further, the documents sought by the Claimants are regulatory settlements whose relevance to specific proofs required in the Claimants' case at Arbitration has not been demonstrated. The Panel cannot compel the production of regulatory settlements or specific Settlement Agreements (Consent Agreements). The Arbitration Panel has no regulatory or legal right/authority to compel a Court of superior jurisdiction to produce a settlement document especially in a matter where a critical nexus has not been made to the specifics of a claim. Secondly, as the Respondent points out, the Settlement Agreement contains clear and unambiguous language that the Settlement Agreement and its specific terms and conditions are barred from use in any subsequent "civil, criminal or administrative proceeding in any court, administratively agency, or other tribunal; nor shall this Agreement confer any rights upon any person or entities who are not a party to the Proceeding". This language cannot be any clearer in its meaning and intent. The

Court, in accepting the Settlement Agreement, has added its authority to that contained in the Settlement Agreement language itself. Neither this Arbitration Panel, nor any other, has the authority in law, regulation, codes of Arbitration procedure, or under the Federal Arbitration Act or any of the state arbitration acts (i.e., NYS CPLR 75) to overrule the terms of the Settlement Agreement or the judgment of the Court in accepting those terms and conditions. If one assumes *arguendo*, that the terms of the Settlement Agreement could be successfully revealed, it would still lend no probative weight to the claim before the Arbitration Panel because the Settlement Agreement does not contain any admissions of guilt or liability on the part of any of the Parties to the Agreement nor does it constitute any findings of facts of law.

The Claimants make repeated references to the "rules of arbitration" but at no time specifically identify any rule under the Federal Arbitration Act, the NASD's Code of Arbitration Procedure, or any other credible and applicable source on arbitration procedure that would support any of the contentions that they are making. The Arbitration Panel has reviewed the Code of Arbitration Procedure and cannot find where the Claimants are drawing their reference. The only apparent area where the "rules" may be connected is in Rule 10321 dealing with matters of discovery. It is the Panel's understanding that the discovery process is designed for the production of evidence pertinent to and directly related to specific allegations of fraud or abuse regarding specific stocks and stock trades, research information provided, or improper or inappropriate recommendations regarding specific stocks. The discovery process is not designed to compel production of evidence in matters not directly related to specific claims and allegations before the Panel nor does it give any panel the authority to overrule lawful Agreements, Decisions, or Judgments of Courts or higher tribunals. Discovery is not an unlimited right of access.

Respondent's offering of the *Lentell* decision is directly on point regarding the need for specificity in an allegation of specific harm regarding the bringing of the case. It is a clear demonstration that we are not plowing new ground in regard to this element of the Arbitration case.

Additionally, it should be noted that claimants' reliance on the concept of default regarding Respondents alleged refusal to abide by the "rules" of Arbitration is not accurate. Give the inherent nature of Arbitration and the requirement that Arbitration Awards must be grounded in the presentation and evaluation of evidence and testimony, default judgments are neither procedurally nor ethically permissible. This principle of Arbitration has been long-standing and cited in major arbitration works such as those of Elkouri & Elkouri and will not be further expounded here.

After due consideration of the evidence, testimony, and submissions contained in the Motion for Dismissal and the Answer thereto, the Arbitration Panel unanimously determines that the Statement of Claim is flawed and without merit and that the petition of the Respondent for dismissal of the Claim should be, and is granted as follows.

ORDER

1. The Statement of Claim in NASD Case #05-00422, Samuel A. Stornelli and Anne E. Stornelli, et al. v. Merrill Lynch, Pierce Fenner and Smith, Inc., is herein and hereby dismissed in its entirety for the reasons noted *supra*.
2. The scheduled evidentiary hearing dates of Thursday, September 29, 2005 and Friday September 30, 2005 are canceled.
3. Distribution of costs are stated in the June 28, 2005 Initial Pre-Hearing Conference Scheduling Order shall remain as stated in that Order.

AWARD

After considering the pleadings, the testimony and evidence presented, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein 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 = \$ 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 and Smith, Inc. is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

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 Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: June 28, 2005 1 session	

Total Forum Fees	= \$ 1,200.00
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1. The Panel has assessed \$300.00 of the forum fees against Claimant Samuel A. Stornelli and Anne E. Stornelli, JTWROS.
2. The Panel has assessed \$300.00 of the forum fees against Claimant Samuel A. Stornelli, IRRA.
3. The Panel has assessed \$300.00 of the forum fees against Claimant Samuel A. Stornelli.
4. The Panel has assessed \$300.00 of the forum fees against Respondent.

Fee Summary

1. Claimants are jointly liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 1,275.00
<u>Less payments</u>	= \$ 1,575.00
Refund Due Claimants	= \$ 300.00
2. Claimant Samuel A. Stornelli is liable for:

<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Claimant Samuel A. Stornelli, IRRA is liable for:

<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00
4. Claimant Samuel A. and Anne E. Stornelli, JTWROS is liable for:

<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00
5. Respondent is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 7,300.00
<u>Less payments</u>	= \$ 11,000.00
Refund Due Respondent	= \$ 3,700.00

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

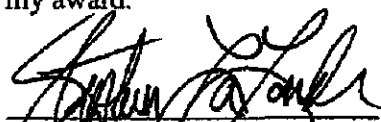
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ARBITRATION PANEL

Stephen P. LaLonde	-	Public Arbitrator, Presiding Chairperson
George B. Melrose	-	Public Arbitrator
Gust D. Servis	-	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.



Stephen P. LaLonde
Public Arbitrator, Presiding Chairperson

9/10/05

Signature Date

George B. Melrose
Public Arbitrator

Signature Date

Gust D. Servis
Non-Public Arbitrator

Signature Date

SEPTEMBER 9, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


Stephen P. LaLonde	-	Public Arbitrator, Presiding Chairperson
George B. Melrose	-	Public Arbitrator
Gust D. Servis	-	Non-Public Arbitrator

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Stephen P. LaLonde
Public Arbitrator, Presiding Chairperson

Signature Date



George B. Melrose
Public Arbitrator

Signature Date

Gust D. Servis
Non-Public Arbitrator

Signature Date

September 9 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Stephen P. LaLonde	-	Public Arbitrator, Presiding Chairperson
George B. Melrose	-	Public Arbitrator
Gust D. Servis	-	Non-Public Arbitrator

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Stephen P. LaLonde
Public Arbitrator, Presiding Chairperson

Signature Date

George B. Melrose
Public Arbitrator

Signature Date



Gust D. Servis
Non-Public Arbitrator

9-09-05
Signature Date

September 9, 2005
Date of Service (For NASD Dispute Resolution use only)