
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Mary F. C. Campbell, Individually and as Trustee for
the Mary F. C. Campbell Trust and as Beneficiary of
the Mary F. C. Campbell Charitable Remainder Unitrust

Case Number: 05-01670

Name of the Respondent

Merrill Lynch, Pierce, Fenner and Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Mary F. C. Campbell, Individually and as Trustee for the Mary F. C. Campbell Trust and as Beneficiary of the Mary F. C. Campbell Charitable Remainder Unitrust, hereinafter collectively referred to as "Claimant": Mark A. Tepper, Esq., Mark A. Tepper, P. A., Ft. Lauderdale, Florida.

For Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS"), hereinafter referred to as "Respondent": Kent B. Frazer, Esq., Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 2005.

Claimant signed the Uniform Submission Agreement: May 23, 2005.

Motion to Dismiss, Answer and Affirmative Defenses filed by Respondent on or about: August 15, 2005.

Respondent signed the Uniform Submission Agreement: June 2, 2005.

Claimant's Opposition to Respondent's Motion to Dismiss filed on or about: October 19, 2005.

Claimant's Motion for Leave to Amend the Statement of Claim filed on or about: December 15, 2005.

Respondent's Response to Claimant's Motion for Leave to Amend filed on or about: January 4, 2006.

Claimant's Reply in Favor of Amending the Statement of Claim filed on or about: January 11, 2006.

Respondent's Notice of Filing Supplemental Authority in Support of its Response to Claimant's Motion for Leave to Amend filed on or about: January 10, 2006.

Claimant's Second Motion for Leave to Amend the Statement of Claim filed on or about: January 31, 2006.

Respondent's Response to Claimant's Second Motion for Leave to Amend Statement of Claim filed on or about: February 3, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentation; omission of facts; unsuitability; violation of Florida Investor Protector Act, Fla. Stat. §517.301 and §517.211; breach of fiduciary duty; negligent supervision; and, gross negligence. The causes of action relate to, but are not limited to, Claimant's portfolio allocation and unspecified equity investments.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$750,000.00; punitive damages in an amount not to exceed the greater of four times the compensatory damages or the sum of \$2,000,000.00, pursuant to Fla. Stat. §768.73(1)(B)1&2, together with a finding, as required by Fla. Stat. §768.73(2)(a)&(b) and/or, that Respondent's unsuitable and/or fraudulent recommendations to Claimant constituted intentional misconduct or gross negligence, Respondent's wrongful conduct was motivated solely by financial gain and the high likelihood of injury from Respondent's wrongful conduct was known by the managing agent, director, and/or officer, or in the alternative, punitive damages in an amount not to exceed the greater of three times the compensatory damages or the sum of \$500,000.00, pursuant to Fla. Stat. §768.73(1)(b)1&2, together with a finding, as required by Fla. Stat. §768.73(2)(a)&(b), that Respondent's unsuitable and/or fraudulent recommendations to Claimant constituted intentional misconduct or gross negligence; attorneys' fees; costs; and, such other and further relief as the undersigned arbitrators (the "Panel") deemed just and proper. The Claimant further requests that the Panel follow the ruling of the Florida Supreme Court and state in the award that Respondent is liable for violating Fla. Stat. §517.301 and §517.211.

Respondent requested that the Panel dismiss the Claim and affirmatively state that Respondent is the prevailing party on Claimant's claim under Chapter 517 of the Florida Statutes.

OTHER ISSUES CONSIDERED AND DECIDED

During the initial telephonic pre-hearing conference, on or about October 20, 2005, Respondent withdrew its Motion to Dismiss.

On or about January 10, 2006, the Panel issued an Order that deferred ruling on Claimant's Motion to Amend the Statement of Claim until the final evidentiary hearing.

On or about February 6, 2006, the Panel issued an Order that deferred ruling on Claimant's Second Motion to Amend the Statement of Claim until the final evidentiary hearing.

At the outset of the final evidentiary hearing, the Panel granted Claimant's Second Motion to Amend the Statement of Claim. Respondent made an oral Motion to Dismiss Claimant's amendment to the Statement of Claim, which was denied by the Panel.

The Panel wishes to note that the Panel's Award in this matter should have no bearing on the Delaware court proceeding.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims for relief, including Claimant's requests for attorney's fees and punitive damages, and the parties' respective requests for relief under Section 517 of the Florida Statutes are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 600.00
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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, Respondent MLPFS is a member firm and a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: November 22, 2005 1 session	
December 2, 2005 1 session	
Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: October 20, 2005 1 session	
January 6, 2006 1 session	
Two (2) Decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/session	= \$ 400.00
February 9, 2006 1 session	
February 10, 2006 1 session	
Fourteen (14) Hearing sessions @ \$1,200.00/session	= \$16,800.00
Hearing Dates: February 13, 2006 2 sessions	
February 14, 2006 2 sessions	
February 15, 2006 2 sessions	
February 16, 2006 2 sessions	
February 17, 2006 3 sessions	
February 27, 2006 3 sessions	
Total Forum Fees	= \$20,500.00

The Panel assessed forum fees in the amount of \$10,250.00 to Claimant.
The Panel assessed forum fees in the amount of \$10,250.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 10,250.00
Total Fees	= \$ 10,850.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 9,050.00

Respondent MLPFS is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 10,250.00</u>
Total Fees	= \$ 18,800.00
<u>Less payments</u>	<u>= \$ 6,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 12,250.00

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

ARBITRATION PANEL

Richard J. Fuller, CPA	-	Public Arbitrator, Presiding Chairperson
Alan E. Linden, B.S., M.A.	-	Public Arbitrator
John W. Platt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Richard J. Fuller, CPA
Public Arbitrator, Presiding Chairperson

March 9, 2006
Signature Date

/s/
Alan E. Linden, B.S., M.A.
Public Arbitrator

March 10, 2006
Signature Date

/s/
John W. Platt
Non-Public Arbitrator

March 10, 2006
Signature Date

March 13, 2006
Date of Service (For NASD Dispute Resolution office use only)

Respondent MLPFS is solely liable for:

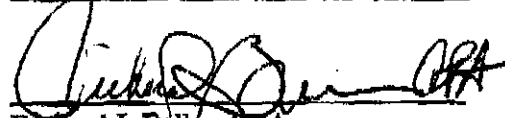
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Richard J. Fuller, CPA
Public Arbitrator, Presiding Chairperson

3/9/2006
Signature Date

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Public Arbitrator

Signature Date

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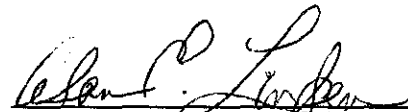
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Richard J. Fuller, CPA
Public Arbitrator, Presiding Chairperson

Signature Date



Alan E. Linden, B.S., M.A.
Public Arbitrator

3/10/06

Signature Date

John W. Platt
Non-Public Arbitrator

Signature Date

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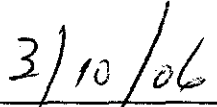
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