

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of Claimants

FBO Regis A. Garcia
FBO Gerri D. Garcia
Regis A. Garcia and Gerri D.
Garcia JTWROS
Yolanda E. Garcia, Regis A. Garcia
and Edward Garcia JTWROS

Case Number: 05-01725

Name of Respondent

Merrill Lynch Pierce Fenner &
Smith, Incorporated

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For FBO Regis A. Garcia, FBO Gerri D. Garcia, Regis A. Garcia and Gerri D. Garcia JTWROS, and Yolanda E. Garcia, Regis A. Garcia, and Edward Garcia JTWROS, hereinafter collectively referred to as "Claimants": Randall Place, Esq., Blum, Silver & Schwartz, LLP, Coral Springs, Florida.

For Merrill Lynch Pierce Fenner & Smith, Incorporated, hereinafter referred to as "Respondent": S. Lawrence Polk, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: March 28, 2005.

Claimants signed Uniform Submission Agreements on: March 16, 2005.

Statement of Answer filed on or about: July 1, 2005.

Respondent signed the Uniform Submission Agreement on: April 22, 2005.

Respondent's Motion to Dismiss filed on or about: July 1, 2005.

Respondent's Motion to Strike Exhibit "A" to the Statement of Claim and All References to the Dinallo Affidavit or Settlements with Regulators filed on or about: July 1, 2005.

Respondent's Motion to Exclude Prior Arbitration Decisions filed on or about: July 1, 2005.

Claimants' Response to Respondent's Motion to Strike Exhibit "A" to the Statement of Claim and All References to the Dinallo Affidavit or Settlements with Regulators and Claimants' Response to Respondent's Motion to Exclude Prior Arbitration Decisions filed on or about: July 12, 2005.

Respondent's Reply in Support of its Motion to Strike Exhibit "A" and the Dinallo Affidavit and Motion to Exclude Prior Arbitration Awards filed on or about: July 21, 2005.

Claimants' Response to Respondent's Motion to Dismiss filed on or about: August 10, 2005.

Respondent's Reply in Support of Motion to Dismiss filed on or about: August 25, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) failure to supervise; 4) breach of contract; 5) common law fraud; and, 6) negligent supervision, retention and hiring of Respondent's employee. The causes of action relate to investment in shares of stock in Infospace.

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: 1) compensatory damages in the amount of \$500,000.00; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) rescission; 4) unspecified punitive damages; 5) costs of this proceeding; and, 6) such other relief as is just and proper.

Respondent requested: 1) dismissal the Statement of Claim in its entirety; and 2) assessment of all costs of the arbitration against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 10, 2006, the Panel denied Respondent's Motion to Strike Exhibit "A" to the Statement of Claim and All References to the Dinallo Affidavit or Settlements with Regulators. Additionally, the Panel denied Respondent's Motion to Exclude Prior Arbitration Decisions as it pertains to the published decision in *Friedman v. Merrill Lynch*.

On or about June 8, 2006, the Panel denied, with prejudice, Respondent's Motion to Dismiss.

At the evidentiary hearing and at the conclusion of Claimants' case-in-chief, Respondent moved for a directed verdict and summary judgment. The Panel denied the motion.

At the evidentiary hearing and at the conclusion of Claimants' case-in-chief, Claimants moved to strike Respondent's request for attorneys' fees pursuant to Section 517.211(6) of the Florida Statutes. Respondent stipulated to withdraw its request for attorneys' fees.

At the evidentiary hearing, Claimants stipulated that their claims do not arise under Chapter 517 of the Florida Statutes and that their claims were limited to Claimants' investment in shares of stock in Infospace.

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

1. Respondent is liable for failure to supervise and negligent supervision and shall pay to Claimant Yolanda E. Garcia, Regis A. Garcia and Edward Garcia JTWROS compensatory damages in the amount of \$40,747.01, plus interest at the rate of 6% per annum from the date of service of the Award until the date of payment of the Award.
2. The claims of Claimants FBO Regis A. Garcia, FBO Gerri D. Garcia, and Regis A. Garcia and Gerri D. Garcia JTWROS are denied in their entirety.
3. Claimants' request for punitive damages is denied.
4. Any and all claims for relief not specifically addressed herein 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	= \$ 300.00
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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 is a party and a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

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 a discovery-related motion on the papers with One (1) arbitrator @ \$200.00	= \$ 200.00
Claimant submitted one (1) discovery-related motion	
Three (3) Pre-hearing sessions with Panel @ \$1,125.00/session	= \$3,375.00
Pre-hearing conferences: August 1, 2005 1 session	
August 22, 2005 1 session	
June 2, 2006 1 session	
Four (4) Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearing Dates: July 11, 2006 2 sessions	
July 12, 2006 2 sessions	
Total Forum Fees	= \$8,075.00

The Panel has assessed \$4,037.50 of the forum fees to Claimants, jointly and severally.

The Panel has assessed \$4,037.50 of the forum fees to Respondents.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Filing Fee	= \$ 300.00
Forum Fees	= \$4,037.50
Total Fees	= \$4,337.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,912.50

Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$4,037.50
Total Fees	= \$9,237.50
Less payments	= \$7,950.00
Balance Due NASD Dispute Resolution	= \$1,287.50

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

ARBITRATION PANEL

<i>Robert Frederick Higgins, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Richard E. Shute</i>	-	<i>Public Arbitrator</i>
<i>William H. Steinbrenner</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Robert Frederick Higgins, Esq.
Public Arbitrator, Presiding Chairperson

07/17/06
Signature Date

/s/
Richard E. Shute
Public Arbitrator

07/15/06
Signature Date

/s/
William H. Steinbrenner
Non-Public Arbitrator

07/17/06
Signature Date

07/18/06
Date of Service (For NASD Dispute Resolution office use only)

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Robert Frederick Higgins, Esq.
Public Arbitrator, Presiding Chairperson

July 17 2006
Signature Date

Richard E. Shute
Public Arbitrator

Signature Date

William H. Steinbrenner
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date



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Public Arbitrator

7/15/06
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Signature Date

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