

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Marianne Chopp

Case Number: 05-01756

Names of the Respondents
Merrill Lynch
Harry Lewkowitz

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Claimant, Marianne Chopp, hereinafter referred to as "Claimant": Hugh H. Bernstein, Esq.,
The Law Offices of Hugh H. Bernstein, Miami, Florida.

For Respondents, Merrill Lynch ("Merrill") and Harry Lewkowitz ("Lewkowitz"), hereinafter
collectively referred to as "Respondents": Frank J. Cuccio, Esq., Bressler, Amery & Ross, P.C.,
New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 4, 2005.

Claimant signed the Uniform Submission Agreement on or about: March 28, 2005.

Statement of Answer filed by Respondents: July 15, 2005.

Respondents did not file executed Uniform Submission Agreements.

Motion to Voluntarily Dismiss Statement of Claim Without Prejudice filed by Claimant on or
about: October 10, 2005.

Response in Opposition to Claimant's Motion to Voluntarily Dismiss Statement of Claim
Without Prejudice filed by Respondents on or about: October 14, 2005.

Motion to Dismiss Statement of Claim With Prejudice filed by Respondents on or about:
December 20, 2005.

Submission in Favor of Expungement filed by Respondent Lewkowitz on or about: January 25,
2006.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) manipulation;
3) unsuitability; 4) misrepresentation; 5) breach of contract; and, 6) failure to supervise. The
causes of action relate to various stock purchases and sales in Claimant's account, including
purchases and sales of Verisign and Dell Computer. The causes of action further relate to the
transformation of Claimant's account from a transaction-based commission structure to a fee-
based commission structure.

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 \$700,000.00 and interest.

Respondents requested that the arbitration Panel dismiss Claimant's Statement of Claim with prejudice, award Respondents costs, and such other relief the Panel deemed just and proper.

Respondent Lewkowitz requested that the Panel recommend expungement of all references to Claimant's action from Respondent Lewkowitz's NASD Central Registration Depository ("CRD") record.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 10, 2005, Claimant filed a Motion for Voluntary Dismissal of the Statement of Claim Without Prejudice. On or about October 14, 2005, Respondents filed a Response in Opposition to Claimant's Motion for Voluntary Dismissal Without Prejudice. On or about December 14, 2005, the Panel denied Claimant's Motion for Voluntary Dismissal of the Statement of Claim Without Prejudice.

On or about December 20, 2005, Respondents filed an unopposed Motion to Dismiss the Statement of Claim With Prejudice. Accordingly, the Panel dismissed the Statement of Claim With Prejudice.

AWARD

Claimant has decided that she no longer wishes to prosecute her claims and will voluntarily withdraw her claims against Respondents Merrill and Lewkowitz with prejudice. Accordingly, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondents Merrill and Lewkowitz are dismissed in their entirety, with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Lewkowitz's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Lewkowitz must obtain confirmation from a court of competent jurisdiction before the NASD 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:

- That the evidence has shown that Claimant's allegations that she was "an unsophisticated buy and hold investor who would occasionally trade her equities" were false;

- That the evidence has shown that Claimant's allegations that she . . . was not an appropriate candidate for the [MULA Account] were false;
- That the evidence has shown that Claimant's allegations that she "did in fact rely on Merrill Lynch research and recommendations which caused her serious financial loss, specifically, but not limited to, Verisign, Dell Computer, et al." were false;
- That the evidence has shown that Claimant's allegations that "[i]n the fall of 1999 (November), the Claimant wished to sell her equities, so that she could buy a new home and that Respondent Lewkowitz persuaded the Claimant to take a margin loan using her equities as collateral rather than selling them for a profit, so she could instead buy more stocks" were false; and
- That the evidence has shown that Claimant's allegations that Claimant "relied on said false research" and that "Respondent Merrill Lynch failed to supervise its brokers and customer accounts" were false.

3. Pursuant to Rule 2130(b)(2)(A) and (B), the Panel determines that the recommendation for expungement in paragraph 2 above is meritorious and has no material adverse effect on investor protection, the integrity of the NASD CRD system, or regulatory requirements.

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	=	\$ 375.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Merrill Lynch is a party and a member firm.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

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 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 arbitration 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00 per session = \$1,200.00

Pre-hearing conference: September 28, 2005 1 session

Two (2) Decisions on discovery related motions decided by the Panel @ 600.00 per motion = \$1,200.00

Dates: December 14, 2005 1 session

December 20, 2005 1 session

One (1) Hearing session with Panel @ \$1,200.00 per session = \$1,200.00

Hearing Date: January 26, 2006 1 session

Total Forum Fees = \$3,600.00

1. The Panel has assessed \$1,800.00 of the forum fees to Claimant.
2. The Panel has assessed \$900.00 of the forum fees to Merrill Lynch.
3. The Panel has assessed \$900.00 of the forum fees to Respondent Lewkowitz.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were assessed during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 1,800.00
Total Fees	= \$ 2,175.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 7,900.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 900.00

Respondent Lewkowitz is solely liable for:

<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 900.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

ARBITRATION PANEL

Arthur J. Leibell, Esq.	-	Public Arbitrator, Presiding Chairperson
Franz C. Thame	-	Public Arbitrator
John Uustal	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Arthur J. Leibell, Esq.
Public Arbitrator, Presiding Chairperson

February 1, 2006
Signature Date

/s/
Franz C. Thame
Public Arbitrator

February 1, 2006
Signature Date

/s/
John Uustal
Non-Public Arbitrator

February 1, 2006
Signature Date

February 1, 2006
Date of Service (For NASD Dispute Resolution office use only)

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Total Fees	= \$ 900.00
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Franz C. Thame
John Uustal

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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Arthur J. Leibell, Esq.
Public Arbitrator, Presiding Chairperson

02-01-05
Signature Date

Franz C. Thame
Public Arbitrator

Signature Date

John Uustal
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

Franz C. Thame
Public Arbitrator

Franz C. Thame 02/01/06
Signature Date

John Uustal
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

Franz C. Thame
Public Arbitrator

Signature Date



John Uustal
Non-Public Arbitrator



Signature Date