

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ugo Bruni (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Caroline Nyklewicz Gundeck (Respondents)

Case Number: 05-01765

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Ugo Bruni hereinafter referred to as "Claimant": Marc F. Desiderio, Esq., Englewood Cliffs, NJ.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Caroline Nyklewicz Gundeck ("Gundeck"), hereinafter collectively referred to as "Respondents": Alan S. Rafterman, Esq., Merrill Lynch, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 31, 2005.

Claimant signed the Uniform Submission Agreement: February 4, 2005.

Joint Statement of Answer filed by Respondents on or about: May 26, 2005.

Merrill Lynch signed the Uniform Submission Agreement: May 26, 2005.

Gundeck signed the Uniform Submission Agreement: May 20, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary and contractual duties, improper supervision and/or failure to supervise. The causes of action relate to Merrill Lynch Focus Twenty Fund Class B.

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 \$28,130.06, loss of profits to be calculated, commissions, account fees, plus pre-judgment interest thereon at the legal rate and costs of these proceedings.

Respondents requested: dismissal of the Statement of Claim in its entirety, costs and expenses of this arbitration, including forum fees and reasonable attorney fees, expungement of Gundeck's CRD records and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant Ugo Bruni or his counsel did not appear at the hearing on March 1, 2006. The undersigned Arbitrator determined that Claimant having submitted the Statement of Claim and received due notice of the hearing, would proceed without said Claimant present, in accordance with the NASD Code of Arbitration Procedure.

Respondents, the only parties to appear at the hearing, 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, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety without prejudice.
2. The Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Caroline Nyklewicz Gundeck's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Caroline Nyklewicz Gundeck 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 Arbitrator has made the following affirmative findings of fact:

The claim, allegation, or information is false.

3. Claimant is liable for and shall pay to Respondents \$4,000.00 for costs.
4. Any and all relief not specifically addressed herein, is denied.

FEEES

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 = \$150.00

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 event giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

Forum Fees and Assessments

The Arbitrator 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 a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: August 15, 2005 1 session	

One (1) Hearing session with a single arbitrator @ \$450.00	= \$450.00
Hearing Date: March 1, 2006 1 session	

Total Forum Fees	= \$ 900.00
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1. The Arbitrator has assessed \$900.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,050.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 450.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$2,350.00
Total Fees	= \$2,350.00
<u>Less payments</u>	= \$2,350.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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


ARBITRATOR

Cheryl H. Agris, PhD

Sole Public Arbitrator

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 is which is my award.

Arbitrator's Signature


Cheryl H. Agris, PhD
Sole Public Arbitrator

3/10/06
Signature Date

March 10, 2006

Date of Service (For NASD Dispute Resolution use only)