

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Eileen B. Lang vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., UBS Financial Services, Inc. and Joseph R. Chiarantona, Jr.

Case Number: 05-04833

Hearing Site: Philadelphia, PA

Nature of the Dispute: Customer v. Members and Associated Person.

REPRESENTATION OF PARTIES

Claimant, Eileen B. Lang, hereinafter referred to as "Claimant", was represented by Steven H. Berkowitz, Esq. and Daniel L. Petulli, Esq., Moore & Berkowitz, Southampton, Pennsylvania.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), was represented by William J. Manning, Jr., Esq., Loeb & Loeb, LLP, New York, New York.

Respondents, UBS Financial Services, Inc. ("UBS") and Joseph R. Chiarantona, Jr. ("Chiarantona"), were represented by Jon D. Kaplan, Esq., UBS Financial Services, Inc., Weehawken, New Jersey. Respondent Chiarantona was represented by William J. Manning, Jr. Esq. at the hearing..

CASE INFORMATION

Statement of Claim filed on September 14, 2005.

Reply to Respondents Merrill Lynch and Chiarantona's Answer filed by Claimant on January 24, 2006.

Reply to Respondents UBS and Chiarantona's Answer filed by Claimant on January 24, 2006.

Claimant signed the Uniform Submission Agreement on September 6, 2005.

Statement of Answer filed by Respondents Merrill Lynch and Chiarantona on January 13, 2006.

Statement of Answer filed by Respondents UBS and Chiarantona on January 13, 2006. A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on November 10, 2005.

A representative of Respondent UBS executed the Uniform Submission Agreement on January 13, 2006.

Respondent Chiarantona signed the Uniform Submission Agreement on January 17, 2006.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action, among others: fraud, fraudulent inducement, breach of contract and implied covenant of fair dealing, breach of fiduciary duty, negligence, violation of NASD Conduct Rule 2110 and NYSE Business Conduct Rule 401, unjust enrichment, and failure to supervise. The causes of action relate to the purchase of various mutual funds, including: John Hancock Technology Fund B, Pimco Innovations, Putnam New Opportunities, Delaware Select Growth Blackrock MidCap Growth Inv B, and Van Kampen Emerging Growth.

Unless specifically admitted in their Statement of Answer, Respondents Merrill Lynch and Chiarantona denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimants' claims are barred by the doctrines of estoppel, laches and ratification; assumption of the risk; failure to use requisite due diligence; failure to mitigate damages; and authorization.

Unless specifically admitted in their Statement of Answer, Respondents UBS and Chiarantona denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimants' claims are barred by the doctrines of ratification, laches, waiver and ratification; Claimant's claims are barred by the statute of limitations, failure to mitigate damages; and authorization.

Claimant, in her Reply to Respondents' Merrill Lynch and Chiarantona's Statement of Answer, denied the affirmative defenses raised in their Statement of Answer.

Claimant, in her Reply to Respondents' UBS and Chiarantona's Statement of Answer, denied the affirmative defenses raised in their Statement of Answer.

RELIEF REQUESTED

Claimant, in the Statement of Claim, requested compensatory damages in the amount of \$375,035.87, treble damages, punitive damages, attorneys' fees, costs and interest.

Respondents Merrill Lynch and Chiarantona requested the Statement of Claim be dismissed with prejudice, that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from the Central Registration Depository ("CRD") record of Respondent Chiarantona, attorneys' fees, and costs.

Respondents UBS and Chiarantona requested dismissal of this proceeding, that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from the CRD record of Respondent Chiarantona, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On August 10, 2006, Claimant notified NASD Dispute Resolution that she had settled all claims against Respondents UBS, and against Respondent Chiarantona for the time period for which he was employed by UBS..

At the hearing, Respondents Merrill Lynch and Chiarantona made an oral motion to Dismiss which the Panel denied. The Panel granted Respondent's Motion for Directed Verdict on the Allegation of Fraud

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

1. Respondents Merrill Lynch and Chiarantona are liable to and shall pay to Claimant compensatory damages in the amount of \$35,000.00;
2. The parties shall bear their respective costs, except as Fees are specifically addressed herein; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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	= \$ 500.00
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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, Respondents Merrill Lynch and UBS are parties.