
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant
Ana Maria Calcagno

Case Number: 05-04971

Names of Respondents
Juan Carlos Costas
Merrill Lynch, Pierce, Fenner & Smith, Incorporated

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Ana Maria Calcagno ("Calcagno"), hereinafter referred to as "Claimant": Frank P. Cuneo, Esq., Lieber, Gonzalez & Portuondo, P.A., Miami, Florida.

For Juan Carlos Costas ("Costas") and Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill"), hereinafter collectively referred to as "Respondents": David S. Richan, Esq., Baritz & Colman, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 22, 2005.

Claimant signed the Uniform Submission Agreement: July 31, 2005.

Answer and Affirmative Defenses filed by Respondents on or about: December 7, 2005.

Respondent Merrill signed the Uniform Submission Agreement: October 31, 2005.

Respondent Costas signed the Uniform Submission Agreement: November 13, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: 1) misrepresentation; 2) unsuitability; 3) unauthorized trading; 4) churning; 5) fraud; 6) failure to supervise; 7) negligence; 8) breach of fiduciary duty; 9) breach of contract; 10) violation of SEC Rule 240.17a-3; 11) violation of NYSE Rule 410 and NASD Rule 3110; and, 12) violation of NYSE Rule 401 and NASD Rule 2110. The causes of action relate to margin purchases in Claimant's account of various common stocks.

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 the following relief: 1) compensatory damages in the amount of \$400,000.00; 2) punitive damages; 3) attorneys' fees; and, 4) costs.

Respondents requested the following relief: 1) dismissal of this action in its entirety; 2) an expungement directive providing for the deletion of all references to this matter from the NASD Central Registration Depository ("CRD") records of Respondent Costas; 3) reimbursement of all costs incurred in connection with their defense of this matter; and, 4) such further relief as the undersigned arbitrators (the "Panel") deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination and finds as follows:

1. Respondents are liable to Claimant for failure to invest Claimant's assets in suitable investments given her financial situation, needs, and lack of investment experience and objectives.
2. Respondent Merrill is liable to Claimant for failure to supervise Respondent Costas and this account.
3. Respondents are liable to Claimant for breach of contract resulting from unsuitability and failure to supervise.
4. Claimant's assigned Power-of-Attorney, a non-party in this matter, is found to have contributed to the situation giving rise to the liability of Respondents to Claimant, and since the Power-of-Attorney is the agent of Claimant, this contribution is attributed to Claimant. In addition, it is found that Claimant, by giving control of the account via Power-of-Attorney, must bear some responsibility for not properly exercising her duty as a customer. The amount of the Award reflects this finding.
5. In light of the foregoing, Respondents are jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$195,000.00.
6. Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages and attorneys' fees and Respondent Costas' request for expungement, are denied.

FEES

Pursuant to the NASD Code of Arbitration proceeding (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

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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill is a party and a member firm.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees 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:

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:

| | |
|---|-------------|
| Two (2) Decisions on discovery-related motions on the papers with one (1) arbitrator @ \$200.00/decision | = \$ 400.00 |
| One (1) Decision on discovery-related motion on the papers with three (3) arbitrators @\$200.00/arbitrator | = \$ 600.00 |
| Claimant submitted three (3) discovery-related motions | |

Three (3) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 3,375.00
Pre-hearing conferences: January 25, 2006 1 session
July 18, 2006 1 session
August 15, 2006 1 session

Ten (10) Hearing sessions @ \$1,125.00/session = \$11,250.00
Hearing Dates: October 31, 2006 2 sessions
November 1, 2006 2 sessions
November 2, 2006 1 session
January 24, 2007 2 sessions
January 25, 2007 2 sessions
January 26, 2007 1 session

Total Forum Fees = \$15,625.00

The Panel has forum fees in the amount of \$7,812.50 to Claimant.
The Panel has forum fees in the amount of \$7,812.50 to Respondents, jointly and severally.

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

Claimant is solely liable for:

| | |
|-------------------------------------|--------------|
| Filing Fee | = \$ 300.00 |
| Forum Fees | = \$7,812.50 |
| Total Fees | = \$8,112.50 |
| Less payments | = \$1,425.00 |
| Balance Due NASD Dispute Resolution | = \$6,687.50 |

Respondent Merrill is solely liable for:

| | |
|-------------------------------------|--------------|
| Member Fees | = \$5,200.00 |
| Total Fees | = \$5,200.00 |
| Less payments | = \$5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents Merrill and Costas are jointly and severally liable for:

| | |
|-------------------------------------|--------------|
| Forum Fees | = \$7,812.50 |
| Total Fees | = \$7,812.50 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$7,812.50 |

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

ARBITRATION PANEL

| | | |
|-------------------------------|---|---|
| <i>John Leo Williams, JD</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>George D. Lambert, III</i> | - | <i>Public Arbitrator</i> |
| <i>Bernard A. D'Amour</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

/s/
John Leo Williams, JD
Public Arbitrator, Presiding Chairperson

January 31, 2007
Signature Date

/s/
George D. Lambert, III
Public Arbitrator

January 30, 2007
Signature Date

/s/
Bernard A. D'Amour
Non-Public Arbitrator

January 30, 2007
Signature Date

January 31, 2007
Date of Service (For NASD Dispute Resolution office use only)

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George D. Lambert, III
Public Arbitrator

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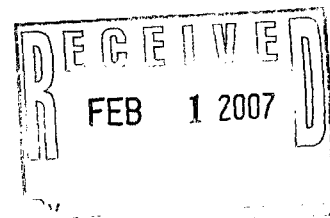


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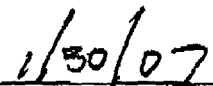
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