
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Elizabeth M. Earley

Case Number: 06-03144

Names of the Respondents
Morgan Stanley DW Inc.
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Baltimore, Maryland

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Elizabeth M. Earley, hereinafter referred to as "Claimant": Debra G. Speyer, Esq., Philadelphia, Pennsylvania.

For Respondent Morgan Stanley DW Inc. ("MSDW"): Jeanine M. Larrea, Esq., Morgan Stanley DW Inc. Law Dept., Purchase, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): Andrew J. Kohler, Senior Counsel, Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 29, 2006.

Claimant signed the Uniform Submission Agreement: June 21, 2006.

Motion to Dismiss and Statement of Answer filed by Respondent MSDW on or about: October 16, 2006.

Motion to Dismiss and Preliminary Answer filed by Respondent Merrill Lynch on or about: October 26, 2006.

Respondent Merrill Lynch signed the Uniform Submission Agreement: November 6, 2006.

Respondent MSDW signed the Uniform Submission Agreement: October 11, 2006.

Response to MSDW's and Merrill Lynch's Motions to Dismiss filed by Claimant on or about: December 21, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: 1) unsuitability; 2) misrepresentation and omissions; 3) negligence; 4) breach of fiduciary duty; 5) breach of contract; 6) violation of federal securities laws; 7) *respondeat superior*; 8) violation of Maryland state securities laws; and 9) failure to supervise. The

causes of action relate to the purchase of various unspecified equity securities and mutual funds in Claimant's account.

Unless specifically admitted in their Answers, 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 \$150,000.00, rescission, interest, disgorgement of all commissions and fees plus legal interest, costs including expenses, disbursements and reimbursement of all filing and forum fees, attorney's fees, punitive damages, and such other and further relief as the Panel deemed just and proper.

Respondent MSDW requested that the Statement of Claim be dismissed and an award of any further relief as the Panel deemed just and proper. In its Motion to Dismiss, Respondent MSDW asserted that Claimant's claims are time barred by the applicable statute of limitations.

Respondent Merrill Lynch requested that the Statement of Claim be dismissed in its entirety, with prejudice, plus an award of costs and expenses, attorneys' fees and such other and further relief as the Panel deemed just and proper. In its Motion to Dismiss, Respondent Merrill Lynch asserted that Claimant's claims are time barred by the applicable statute of limitations.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 2, 2007, after the Initial Pre-hearing Conference for this matter, the Panel issued an Order that granted Respondents' Motions to Dismiss.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

AWARD

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

The Motions to Dismiss of Respondents MSDW and Merrill Lynch are granted and all Claimant's claims are dismissed in their entirety.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and all requests for attorneys' fees, are dismissed.

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

The Panel has waived Claimant's filing fee.

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 MSDW is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Total Member Fees	= \$ 2,450.00

Respondent Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Total Member Fees	= \$ 2,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed 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:

No cancellation fees were assessed in this matter.

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.

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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) Pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: December 21, 2006 1 session	
Total Forum Fees	= \$1,125.00

The Panel has assessed \$562.50 of the forum fees to Respondent MSDW.
The Panel has assessed \$562.50 of the forum fees to Respondent Merrill Lynch.

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 incurred during this proceeding.

Fee Summary

Respondent MSDW is solely liable for:

Member Fees	= \$ 2,450.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 3,012.50
Less payments	= \$ 3,012.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 2,450.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 3,012.50
Less payments	= \$ 2,450.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Thomas B. Corey, Esq.	-	Public Arbitrator, Presiding Chairperson
Harvey Baum	-	Public Arbitrator
N. Clark Moran	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/
Thomas B. Corey, Esq.
Public Arbitrator, Presiding Chairperson

1/3/07
Signature Date

/s/
Harvey Baum
Public Arbitrator

1/4/07
Signature Date

/s/
N. Clark Moran
Non-Public Arbitrator

1/3/07
Signature Date

1/4/07
Date of Service (For NASD Dispute Resolution office use only)

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Harvey Baum	-	Public Arbitrator
N. Clark Moran	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Thomas B. Corey, Esq.
Public Arbitrator, Presiding Chairperson

1/3/07
Signature Date:

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Less payments

= \$ 2,450.00

Balance Due NASD Dispute Resolution

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ARBITRATION PANEL

Thomas B. Corey, Esq.

Presiding Chairperson

-

Public Arbitrator,

Harvey Baum

-

Public Arbitrator

N. Clark Moran

-

Non-Public

Arbitrator

Concurring Arbitrators' Signatures

Thomas B. Corey, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

Harvey Baum

Harvey Baum

Public Arbitrator

1/4/2007

Signature Date

N. Clark Moran

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Harvey Baum
Public Arbitrator

Signature Date

N. Clark Moran

N. Clark Moran
Non-Public Arbitrator

1/03/07
Signature Date

Date of Service (For NASD Dispute Resolution office use only)