

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between		Award CASE NO. 88-03356
Estate of Walter Staiman	Claimant and Counter-Respondent	
vs.		
Merrill Lynch, Pierce, Fenner & Smith, Inc.	Respondent and Counter-claimant	
Merrill Lynch, Pierce, Fenner & Smith, Inc.	Third-Party Claimant	
vs.		
Marvin Staiman	Third-Party Respondent	
Merrill Lynch, Pierce, Fenner & Smith, Inc.	Third-Party Claimant & Counter-Respondent	
vs.		
Jeffrey Staiman	Third-Party Respondent and Counter-claimant	

SUMMARY OF ISSUES

This case was filed on October 28, 1988. Claimant alleged the following: fraud, breach of fiduciary duty, negligent misrepresentation, violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, violation of Section 17(a) of the Securities Act of 1933, violation of Section 12(2) of the Securities Act of 1933, liability pursuant to Section 20(a) of the Securities Exchange Act of 1934, violation of the California Corporation Code and violation of the Racketeer Influence and Corrupt Organizations Act of 1970 (RICO) in the management of claimant's securities portfolio invested in options.

Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. (MLPFS) denied generally and specifically each and every allegation contained in the Statement of Claim, and alleged the following: all trading in Walter Staiman's Cash Management Account (CMA) was suitable and executed with the knowledge and approval of Walter Staiman or Marvin Staiman, as attorney in fact for Walter Staiman's Cash Management Account (CMA). Respondent proffered the affirmative defenses of estoppel, ratification and failure to mitigate. Respondent alleged a Counterclaim against claimant for a debit balance of \$43,914.43 plus interest and cost. Respondent alleged

third-party claims, individually, against Third-Party Respondents Jeffrey Staiman and Marvin Staiman for indemnification for any liability and the debit balance of \$43,914.43 plus interest and costs. Third-party respondent Marvin Staiman did not submit to the jurisdiction of the National Association of Securities Dealers, Inc. (NASD) on the MLPFS Third-party claim pursuant to his letter to the NASD of February 27, 1989 and was removed as a third-party respondent by the NASD in its letter of March 14, 1989.

Third-party respondent Jeffrey Staiman alleged: all trades of any significance were subject to review and specific approval (and were approved) by MLPFS branch manager, Louis Elia (Elia), Jeffrey Staiman's supervisor. Any losses which occurred were the direct and sole responsibility of MLPFS which at all relevant times approved of the investment decisions and the conduct of Jeffrey Staiman through Elia. MLPFS is not entitled to indemnification, since any losses were caused by Elia's active conduct, for whom it was vicariously responsible. Jeffrey Staiman denied all other allegations of the third-party claim, and is without knowledge of the averments of paragraph 30 and therefore denied them. Jeffrey Staiman asserted a Third-Party Counterclaim against MLPFS for commissions and pension benefits due, as well as an accounting of the same and costs.

Third-party claimant MLPFS replied to Jeffrey Staiman's Third-party counterclaim by denying generally and specifically each and every allegation.

Claimant replied to respondent MLPFS's counterclaim by denying generally and specifically each and every allegation contained therein.

DAMAGES AND RELIEF REQUESTED

Claimant requested the following:

1. Compensatory damages in excess of \$800,000.00, amended at hearing to \$781,323.00.
2. Punitive damages in the amount of \$2,000,000.00.
3. Racketeering Influence and Corrupt Organization Act (RICO) treble damages.
4. Costs, including attorneys' fees.

Respondent MLPFS counterclaimed for:

1. Debit balance of \$43,914.43
2. Interest at the margin loan rates of April 1986.
3. Costs and attorney's fees.

Respondent MLPFS asserted a Third-party claim against Marvin Staiman for:

1. Indemnification for any amount awarded to claimant.
2. Debit balance of \$43,914.43.
3. Interest at the margin loan rates of April 1986.
4. Costs and attorney's fees.

Respondent MLPFS asserted a Third-Party claim against Jeffrey Staiman for:

1. Indemnification for any amount awarded to claimant.
2. Debit balance of \$43,914.43.
3. Interest at the margin loan rates of April 1986.
4. Costs and attorney's fees.

Third-Party respondent asserted a counterclaim against MLPFS for:

1. Commissions owed as an employee.
2. Pension benefits.
3. An accounting.

DAMAGES AND RELIEF AWARDED

On November 14, 15 and 16, 1989 in Los Angeles, California, the undersigned arbitrators heard the controversy in seven sessions, between the parties as set forth in submissions to arbitration signed by Claimant on June 20, 1988 and by Respondents MLPFS on December 8, 1988, and Third-Party Respondent Jeffrey Staiman on March 2, 1989. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent MLPFS is liable for and shall pay to Claimant the sum of \$370,653.00 in compensatory damages.
2. Each and every other claim is dismissed.
3. The claim for punitive damages is dismissed.
4. Each and every counterclaim of MLPFS is dismissed.

5. Third-party respondent Jeffrey Staiman is liable for and shall pay to MLPFS the sum of \$185,326.50 for its indemnification cause of action.

6. Each and every Third-party counterclaim of Jeffrey Staiman is dismissed.

7. As mentioned above in the Summary of Issues section, Marvin Staiman did not submit to the jurisdiction of the NASD and was removed as a Third-Party Respondent by the NASD. The panel, therefore, did not decide the issues in the Third-Party claim against Marvin Staiman.

8. The parties shall each bear their respective costs including attorneys' fees.

9. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant.

In accordance with Section 43 the arbitrators assess forum fees as follows:

a) Against respondent MLPFS, \$3,500 payable to the NASD.

b) Against Third-party respondent Jeffrey Staiman, \$3,500.00 payable to the NASD.

OTHER ISSUES

Claimant amended his claim at hearing from in excess of \$800,000.00 to \$781,323.00. See also the Report of Arbitrators which is attached.

ARBITRATORS CONCURRING

DATE SERVED: 12/06/89


James F. Buckley

Irving Porush

David C. Ruth

5. Third-party respondent Jeffrey Staiman is liable for and shall pay to MLPFS the sum of \$185,326.50 for its indemnification cause of action.

6. Each and every Third-party counterclaim of Jeffrey Staiman is dismissed.

7. As mentioned above in the Summary of Issues section, Marvin Staiman did not submit to the jurisdiction of the NASD and was removed as a Third-Party Respondent by the NASD. The panel, therefore, did not decide the issues in the Third-Party claim against Marvin Staiman.

8. The parties shall each bear their respective costs including attorneys' fees.

9. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant.

In accordance with Section 43 the arbitrators assess forum fees as follows:

- a) Against respondent MLPFS, \$3,500 payable to the NASD.
- b) Against Third-party respondent Jeffrey Staiman, \$3,500.00 payable to the NASD.


OTHER ISSUES

Claimant amended his claim at hearing from in excess of \$800,000.00 to \$781,323.00. See also the Report of Arbitrators which is attached.

ARBITRATORS CONCURRING

James F. Buckley

DATE SERVED: 12/06/89



Irving Porush

David C. Ruth

5. Third-party respondent Jeffrey Staiman is liable for and shall pay to MLPFS the sum of \$185,326.50 for its indemnification cause of action.

6. Each and every Third-party counterclaim of Jeffrey Staiman is dismissed.

7. As mentioned above in the Summary of Issues section, Marvin Staiman did not submit to the jurisdiction of the NASD and was removed as a Third-Party Respondent by the NASD. The panel, therefore, did not decide the issues in the Third-Party claim against Marvin Staiman.

8. The parties shall each bear their respective costs including attorneys' fees.

9. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant.

In accordance with Section 43 the arbitrators assess forum fees as follows:

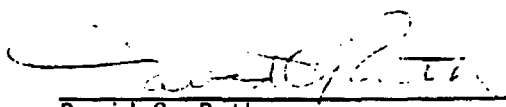
- a) Against respondent MLPFS, \$3,500 payable to the NASD.
- b) Against Third-party respondent Jeffrey Staiman, \$3,500.00 payable to the NASD.

OTHER ISSUES

Claimant amended his claim at hearing from in excess of \$800,000.00 to \$781,323.00. See also the Report of Arbitrators which is attached.

ARBITRATORS CONCURRING

DATE SERVED: 12/06/89



David C. Ruth