

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Matias K. Bonnier, and
Bonnier Motorsports, Inc.,

Claimants,

v.

Merrill Lynch, Pierce,
Fenner & Smith, Inc.,
Leonard E. DeStefano,
Patrick Petsche, and
Frank Bodi,

Respondents.

No. 96-04983

REPRESENTATION OF PARTIES

Claimants Matias K. Bonnier ("Bonnier") and Bonnier Motorsports, Inc. (jointly referred to as "Claimants") were represented by James F. Koehler, Esq. and Timothy J. Fitzgerald, Esq. of Gallagher, Sharp, Fulton & Norman located in Cleveland, Ohio.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Leonard E. DeStefano ("DeStefano"), Patrick Petsche ("Petsche"), and Frank Bodi ("Bodi") (jointly referred to as "Respondents") were represented by Michael E. Olney, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc. located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about November 11, 1996.

Claimants' Submission Agreement was signed on November 6, 1996.

The Joint Statement of Answer was filed on or about February 8, 1997.

The Submission Agreement of Merrill Lynch was signed on February 6, 1997.

The Submission Agreement of DeStefano was signed on February 24, 1997.

The Submission Agreement of Petsche was signed on January 13, 1997.

The Submission Agreement of Bodi was signed on February 6, 1997.

HEARING INFORMATION

The hearings were held on: October 8, 1998 for one (1) session; February 3, 1999 for two (2) sessions; February 4, 1999 for two (2) sessions; February 5, 1999 for two (2) sessions; April 20, 1999 for two (2) sessions; April 21, 1999 for two (2) sessions; and April 22, 1999 for two (2) sessions. The hearing location was Cleveland, Ohio.

Pursuant to the agreement of the parties, closing arguments were made by telephone on May 17, 1999 for one (1) session.

CASE SUMMARY

This claim arose out of a dispute concerning Claimants' brokerage accounts maintained at Respondent Merrill Lynch. Respondents DeStefano, Petsche and Bodi were registered representatives of Merrill Lynch at all times relevant to this claim.

Claimants alleged that they explained to Respondents that they had conservative financial goals for the monies invested in their accounts. According to Claimants, they were not sophisticated in investment matters and relied upon Respondents to select, present to them and recommend only investments which were suitable for them in accordance with their financial goals and objectives. Claimants contended that Respondents nevertheless recommended investments which were highly speculative, involved a high risk loss of principal, and were in other respects unsuitable for Claimants in light of their financial goals. Claimants also alleged that Respondents excessively traded their accounts on margin in order to generate excessive commissions and margin loans. Claimants further maintained that Respondents executed unauthorized trades without Claimants' prior approval. Claimants contended that they have lost more than \$100,000 in principal, interest, and lost opportunity as a result of the acts of Respondents described in the Statement of Claim.

Respondents denied all liability to Claimants in their Joint Statement of Answer. Respondents contended that Claimants expressed their investment objectives as encompassing income,

intermediate term price appreciation and long term price appreciation, and also expressed a willingness to invest in securities all the way up the risk spectrum from investment grade through high risk. Respondents contended that Bonnier was an experienced, sophisticated and aggressive investor who received substantial income from a family trust. Respondents asserted that Claimants made their own investment decisions and also did some independent research concerning the various securities purchased. Respondents contended that transactions were specifically discussed with Claimants and specifically authorized by them. Respondents alleged that, although all transactions were described in monthly account statements mailed to Claimant, at no time during the existence of Claimants' accounts did Claimants complain about the quality of the securities traded or level of activity in their accounts.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested an award of the following: compensatory damages of approximately \$100,000 against Merrill Lynch and the individual respondents, treble damages, punitive damages of not less than \$500,000, interest, attorney fees, and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus attorney fees and costs.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Leonard E. DeStefano are jointly and severally liable for and shall pay to Claimant Matias K. Bonnier compensatory damages in the amount of \$24,444.00;
- (2) That Respondents Merrill Lynch, Pierce Fenner & Smith, Inc., Patrick Petsche and Frank Bodi are jointly and severally liable for and shall pay to Claimant Matias K. Bonnier compensatory damages in the amount of \$26,905.00;
- (3) That no award will be made with respect to any claims asserted by Claimant Bonnier Motorsports, Inc.;
- (4) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (5) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were fourteen (14) hearing sessions x \$1,000 = \$14,000 in forum fees. Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited by the Claimants.

Pursuant to Rule 10332(c) of the Code, Claimants are jointly and severally liable for and shall pay forum fees in the amount of \$6,000(1/2 forum fees - hearing session deposit).

Pursuant to Rule 10332(c) of the Code, Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$7,000(1/2 forum fees).

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch has paid to NASD Regulation, Inc. the \$500 member surcharge previously invoiced.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

Jeffrey M. Bain, Esq.
Chairperson
Public Arbitrator

Dated:

Barry Goldman, Esq.
Panelist
Public Arbitrator

Dated:



Jay S. Farrier
Panelist
Industry Arbitrator

5-25-99
Dated:

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Date award served on parties: _____

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-04983
Award Page 5 of 5

Pursuant to Rule 10332(c) of the Code, Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$7,000(1/2 forum fees).

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch has paid to NASD Regulation, Inc. the \$500 member surcharge previously invoiced.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:


Jeffrey M. Bain, Esq.
Chairperson
Public Arbitrator


Dated: June 1, 1999

Barry Goldman, Esq.
Panelist
Public Arbitrator

Dated:

Jay S. Ferrier
Panelist
Industry Arbitrator

Dated:

For NASD Regulation use only:
Date award served on parties: _____

Pursuant to Rule 10332(c) of the Code, Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$7,000(1/2 forum fees).

OTHER COSTS

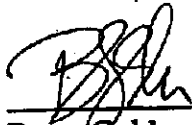
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Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

Jeffrey M. Bain, Esq.
Chairperson
Public Arbitrator

Dated:



Barry Goldman, Esq.
Panelist
Public Arbitrator

5/23/99
Dated:

Jay S. Ferrier
Panelist
Industry Arbitrator

Dated:

For NASD Regulation use only:
Date award served on parties: _____