

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Alfred and Deborah Lipshultz

Case No. 99-00276

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Guy James Abbanat

REPRESENTATION OF PARTIES

For Claimants Alfred and Deborah Lipshultz, hereinafter referred to as "Claimants": Russell L. Forkey, Esq. of Russell L. Forkey, P.A., Fort Lauderdale, Florida.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Guy James Abbanat ("Abbanat"), hereinafter referred to as "Respondents": Charles L. Henderson, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on: January 20, 1999.

Claimants signed the Uniform Submission Agreement on: January 12, 1999.

Joint Statement of Answer filed by Respondents Merrill and Abbanat on: May 18, 1999.

Respondent Merrill's Uniform Submission Agreement signed on: May 14, 1999 by Robert E. Goldberg, Director and Senior Counsel, on behalf of Merrill.

Respondent Abbanat signed the Uniform Submission Agreement on: March 17, 1999.

CASE SUMMARY

Claimants asserted the following causes of action in connection with the alleged mishandling of their account by Respondents: negligence; breach of fiduciary duty; breach of contract; and, as it relates to Respondent Merrill, negligent supervision.

Unless specifically admitted in their joint Statement of Answer, Respondents denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following defenses: The Statement of Claim fails to state a claim upon which relief can be granted and is barred by statutes of limitation under federal and state laws; the Statement of Claim fails to particularize facts establishing a legal theory under which Respondents could be held liable for the alleged damages; Claimants are barred from any recovery because they directed,

authorized, consented to, acquiesced in, and/or ratified all transactions in their account with Merrill; Claimants made all of the investment decisions with regard to their account and any losses which may have been suffered by Claimants were caused by the investment decisions made by Claimants and due to market conditions outside the control of Respondents; each transaction was expressly authorized and approved by Claimants prior to execution; Respondents are not liable to Claimants in any amount because, at all relevant times, Respondents acted properly and in good faith with regard to Claimants' account; all transactions were separately confirmed in writing and were reflected on monthly statements; and, no timely complaint or objection was ever made to Merrill by Claimants regarding their account.

RELIEF REQUESTED

Claimants requested compensatory damages of approximately \$135,000.00, punitive damages of \$25,000.00, interest, costs, attorneys' fees and such other relief deemed appropriate by the panel.

Respondents requested that the arbitration panel dismiss Claimants' claims against them and that they be awarded their costs and expenses incurred in the defense of this matter.

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 as follows:

1. Respondents Merrill and Abbanat are found not liable and, therefore, all claims against them are denied.
2. Claimants' requests for punitive damages, interest, costs and attorneys' fees are denied.
3. Any other claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee: = \$200.00

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 person at the time of the events giving rise to the dispute. In this matter, the member firm, Merrill, is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$750.00 = \$750.00

Pre-hearing conference date: September 2, 1999 1 session

Four (4) Hearing sessions x \$750.00 = \$3,000.00

Hearing dates: January 31, 2000 2 sessions

February 1, 2000 2 sessions

Total Forum Fees = \$3,750.00

The Panel has assessed \$1,875.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$1,875.00 of the forum fees jointly and severally to Respondents Merrill and Abbanat.

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee = \$ 200.00

Forum Fees = \$1,875.00

Total Fees = \$2,075.00

Less payments = \$ 950.00

Balance Due NASD Regulation, Inc. = \$1,125.00

Respondent Merrill be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondents Merrill and Abbanat be and hereby are jointly and severally liable for:

Forum Fees	= \$1,875.00
Balance Due NASD Regulation, Inc.	= \$1,875.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

_____/s/_____
Fred W. Ives
(Public/Chairperson)

Signature Date

_____/s/_____
Alfred Fingerman
(Public/Panelist)

Signature Date

_____/s/_____
Janet N. Smiles
(Industry/Panelist)

Signature Date

March 22, 2000

Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution
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Member Fees	= \$4,600.00
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<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondents, Merrill and Abbanat, bc and hereby are jointly and severally liable for:

Forum Fees	= \$1,875.00
Balance Due NASD Regulation, Inc.	= \$1,875.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Fred W. Ives
 Fred W. Ives
 (Public/Chairperson)

3/22/00
 Signature Date

Alfred Fingerman
 Alfred Fingerman
 (Public/Panelist)

Signature Date

Janet N. Smiles
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 (Industry/Panelist)

Signature Date

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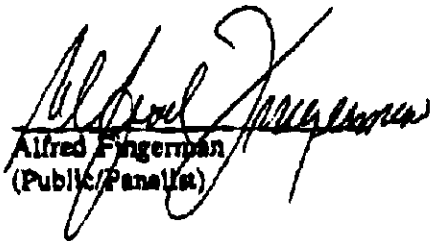
Forum Fees	= \$1,875.00
Balance Due NASD Regulation, Inc.	= \$1,875.00

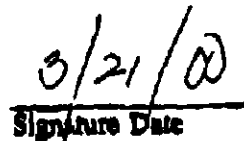
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Signature Date


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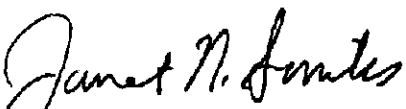
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Alfred Fingerman
(Public/Panelist)

Signature Date



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