
Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Vito Colonna and Debra Colonna,
Claimants

Vs.

Merrill Lynch Pierce Fenner & Smith, Inc., and
Vicenzo Costanzo, and
Adam Walter Schoesler,
Respondents.

Case Number: 99-05049

Hearing Site: Cleveland, Ohio

REPRESENTATION OF PARTIES

Erwin J. Shustak, Esquire, of Shustak, Jalil & Heller, San Diego, California, represented Claimants Vito Colonna and Debra Colonna, ("the Colonnas"), hereinafter referred to as "Claimants".

Dominick F. Evangelista, Esquire, of Bressler, Amery & Ross, Morristown, New Jersey, represented Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), Vicenzo Costanzo, ("Costanzo") and Adam Walter Schoesler ("Schoesler").

Respondents David Arthur Ruckman ("Ruckman"), Cheryl Ann Bade ("Bade") and Selden Kent Martin ("Martin") were dismissed from the case prior to the hearing, and were therefore not represented at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about November 9, 1999.

Claimants both signed the Uniform Submission Agreement on April 16, 1999.

Respondents Merrill Lynch, Costanzo, Schoesler, Ruckman, Bade and Martin filed their joint Statement of Answer on or about February 18, 2000.

Ralph M. Cursio, Esquire, for Merrill Lynch, signed the Uniform Submission Agreement on February 14, 2000.

Costanzo signed the Uniform Submission Agreement on February 14, 2000.

Schoesler signed the Uniform Submission Agreement on January 10, 2000.

Ruckman signed the Uniform Submission Agreement on February 18, 2000.

Bade signed the Uniform Submission Agreement on January 5, 2000.

Martin signed the Uniform Submission Agreement on January 10, 2000.

CASE SUMMARY

Claimants asserted the following against the Respondents: churning, failure to supervise, unsuitability, breach of fiduciary duty, negligence and breach of contract. The allegations related to transactions in foreign securities, option transactions and margin trading.

Unless specifically admitted in their joint Statement of Answer, Respondents Merrill Lynch, Costanzo, Schoesler, Ruckman, Bade and Martin denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to mitigate and laches.

RELIEF REQUESTED

Claimants requested the following relief:

Compensatory Damages

At least \$3,000,000.00

Punitive Damages

unspecified

Claimants also requested costs and attorneys' fees.

Respondents Merrill Lynch, Costanzo, Schoesler, Ruckman, Bade and Martin requested that the Statement of Claim be dismissed in its entirety, and that they be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 9, 2001, the parties jointly filed a Stipulation of Dismissal with Prejudice of all claims asserted against Respondents David Arthur Ruckman, Cheryl Ann Bade and Selden Kent Martin, and stipulated to the removal of these parties from the case caption.

AWARD

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

1. Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Vincenzo Costanzo and Adam Walter Schoesler are jointly and severally liable for, and shall pay to Claimants Vito Colonna and Debra Colonna, the sum of \$450,000.00 (Four Hundred Fifty Thousand Dollars and No Cents) as compensatory damages.
2. Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Vincenzo Costanzo and Adam Walter Schoesler are jointly and severally liable for the cost of the court reporter that attended and recorded the arbitration hearing and for the four sets of transcripts provided to the panel and to NASD Dispute Resolution, Inc. The costs of any other transcripts shall be born by the party or parties requesting them.
3. Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Vincenzo Costanzo and Adam Walter Schoesler are jointly and severally liable for, and shall pay to Claimants Vito Colonna and Debra Colonna, the sum of \$600.00 (Six Hundred Dollars and No Cents) as reimbursement of the non-refundable filing fee paid by Claimants to NASD Dispute Resolution, Inc.
4. Except as otherwise specified herein, each party shall bear its own costs and attorneys' fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member Surcharge	= \$2,500.00
Pre-hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$4,500.00

Adjournment Fees

Claimants - October 30 through November 1, 2000 = \$1,200.00

Forum Fees and Assessments

The Panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the Panel that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions - single arbitrator x \$450 = \$ 900.00

Pre-hearing conferences: August 9, 2000 1 session
June 15, 2001 1 session

Two (2) Pre-hearing sessions - Panel x \$1,200 = \$ 2,400.00

Pre-hearing conferences: June 12, 2000 1 session
July 18, 2001 1 session

Sixteen (16) Hearing sessions x \$1,200 = \$19,200.00

Hearing Date: July 24, 2001 2 sessions
July 25, 2001 2 sessions
July 26, 2001 2 sessions
July 27, 2001 2 sessions
September 25, 2001 2 sessions
September 26, 2001 2 sessions
October 15, 2001 2 sessions
October 16, 2001 2 sessions

Total Forum Fees = \$22,500.00

The Panel has assessed the forum fees jointly and severally to Respondents Merrill Lynch, Costanzo and Schoesler.

FEE SUMMARY

1. Claimants Mr. and Mrs. Colonna are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 1,800.00
Less payments	= \$ 3,000.00
Refund Due from NASD Dispute Resolution, Inc.	= \$ 1,200.00

2. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$ 7,600.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Vincenzo Costanzo and Adam Walter Schoesler are jointly liable for:

<u>Forum Fees</u>	= \$22,500.00
<u>Total Fees</u>	= \$22,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$22,500.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Michael L. King, Esq.

Public, Presiding Chair

Benjamin B. Segel, Esq.

Public Arbitrator

Howard A. Slater, MBA

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael L. King

December 14, 2001

Michael L. King, Esq.

Signature Date

Public Arbitrator, Presiding Chair

Benjamin B. Segel

December 17, 2001

Benjamin B. Segel, Esq.

Signature Date

Public Arbitrator

Howard A. Slater

December 13, 2001

Howard A. Slater, MBA

Signature Date

Non-Public Arbitrator

December 17, 2001

Date of Service

NASD-DR Award

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NASD Dispute Resolution, Inc.
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 Benjamin B. Segel, Esq.
 Howard A. Slater, MBA

Public, Presiding Chair
 Public Arbitrator
 Non-Public Arbitrator

Michael L. King, Esq.
 Benjamin B. Segel, Esq.
 Howard A. Slater, MBA

Concurring Arbitrators' Signatures**Concurring Arbitrators' Signatures**

Michael L. King
 Michael L. King, Esq.
 Public Arbitrator, Presiding Chair

December 14, 2001
 Signature Date
 Michael L. King, Esq.
 Public Arbitrator

Benjamin B. Segel, Esq.
 Benjamin B. Segel, Esq.
 Public Arbitrator

Signature Date

Howard A. Slater, MBA
 Howard A. Slater, MBA
 Non-Public Arbitrator

Signature Date

Date of Service

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Benjamin B. Segel, Esq.

Howard A. Slater, MBA

Public, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael L. King, Esq.

Public Arbitrator, Presiding Chair



Benjamin B. Segel, Esq.

Public Arbitrator

Signature Date

12/17/01

Signature Date

Howard A. Slater, MBA

Non-Public Arbitrator

Signature Date

Date of Service

NASD-DR Award

Vito Colonna and Debra Colonna vs. Merrill Lynch Pierce Fenner & Smith, Inc., et al

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Public Arbitrator

Non-Public Arbitrator

Michael L. King, Esq.

Benjamin B. Segel, Esq.

Howard A. Slater, MBA

Concurring Arbitrators' Signatures**Concurring Arbitrators**

Michael L. King, Esq.

Public Arbitrator, Presiding Chair

Signature Date

Michael L. King, Esq.

Public Arbitrator, Presiding Chair

Benjamin B. Segel, Esq.

Public Arbitrator

Signature Date



Howard A. Slater, MBA

Non-Public Arbitrator

12/13/01

Signature Date

Date of Service