Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
Craig P. Mackay
Craig P. Mackay and Luisa Mackay JTWROS

Case Number: 03-06175

Name of the Respondent
Merrill Lynch, Pierce, Fenner and Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Craig P. Mackay and Craig P. Mackay and Luisa Mackay JTWROS, hereinafter collectively referred to as "Claimants": Scott L. Silver, Esq., Blum, Silver & Schwarz, L.L.P., Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS"), hereinafter referred to as "Respondents": Craig R. Glasser, Esq., Baritz & Coleman, L.L.P., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2003.
Claimants signed the Uniform Submission Agreement: August 15, 2003.
Motion to Strike and Answer filed by Respondent on or about: November 24, 2003.
Respondent did not file an executed Uniform Submission Agreement.
Claimants Response to Motion to Strike filed on or about: January 14, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: negligent supervision; breach of fiduciary duty; common law fraud; negligence; violation of industry rules; and, violation of the Florida Statutes, including but not limited to Section 517. The causes of action relate to the purchase of unspecified technology stocks in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of $450,000.00, interest at the legal rate from the date of purchase or reasonable market interest, rescission, reasonable attorneys' fees (to be determined by a court of competent jurisdiction), punitive damages, costs, and such other relief as is deemed just and proper.

Respondent requested dismissal of the action in its entirety, together with a determination that Respondent is the prevailing party, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about March 18, 2004, the Panel issued an order, which denied Respondent's Motion to Strike.

The parties 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 and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is partially liable on the claims of negligence and violation of industry rules on suitability and shall pay to Claimants compensatory damages in the amount of $55,950.00.

Any and all relief not specifically addressed herein, including Claimants' claims for violations of Chapter 517 and request for punitive damages, are denied.

FEES

Pursuant to 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

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, MLPFS is a member firm and a party.

Member surcharge	= $1,700.00
Pre-hearing process fee	= $ 750.00

Hearing process fee	= $2,750.00
Total Member Fees	= $5,200.00

Adjournment Fees
Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred 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 three-day cancellation fees were incurred 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 in this matter.

Forum Fees and Assessments
The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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:	March 18, 2004	1 session	
Four (4) Hearing sessions @ $1,125.00/session			= $4,500.00
Hearing Dates:	January 18, 2005	2 sessions	
	January 19, 2005	2 sessions	
Total Forum Fees			= $5,625.00

The Panel has assessed forum fees of $2,812.50 to Claimants, jointly and severally.
The Panel has assessed forum fees of $2,812.50 to Respondent.

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 in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= $ 300.00
Forum Fees	= $2,812.50
Total Fees	= $3,112.50
Less payments	= $1,425.00
Balance Due NASD Dispute Resolution	= $1,687.50

Respondent is solely liable for:

Member Fees	= $5,200.00
Forum Fees	= $2,812.50
Total Fees	= $8,012.50
Less payments	= $5,200.00
Balance Due NASD Dispute Resolution	= $2,812.50

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

ARBITRATION PANEL

William J. Callahan, CPA	-	Public Arbitrator, Presiding Chairperson
Lee E. Karofsky, JD	-	Public Arbitrator
John M. Eadie	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ January 21, 2005
William J. Callahan, CPA Signature Date
Public Arbitrator, Presiding Chairperson

/s/ January 21, 2005
Lee E. Karofsky, JD Signature Date
Public Arbitrator

/s/ January 21, 2005
John M. Eadie Signature Date
Non-Public Arbitrator

January 24, 2005
Date of Service (For NASD Dispute Resolution office use only)

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Wm J Callahan — 1-21-05

William J. Callahan, CPA
Public Arbitrator, Presiding Chairperson

Signature Date

Lee E. Karofsky, JD
Public Arbitrator

Signature Date

John M. Badie
Non-Public Arbitrator

Signature Date

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William J. Callahan, CPA
Public Arbitrator, Presiding Chairperson

Signature Date

Lee E. Karofsky, JD
Public Arbitrator

1/21/05
Signature Date

John M. Eadie
Non-Public Arbitrator

Signature Date

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

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Public Arbitrator, Presiding Chairperson

Signature Date

Lee E. Karofsky, JD
Public Arbitrator

Signature Date

John M. Eadie
Non-Public Arbitrator

1-21-05
Signature Date
5PM

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