Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Janis Goldberg

Case Number: 03-08737

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

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Janis Goldberg, hereinafter referred to as "Claimant": Randall C. Place, Esq., Blum, Silver & Schwartz, LLP, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Inc., hereinafter referred to as "Respondent": Stephen C. Jackson, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: December 5, 2003.
Claimant signed the Uniform Submission Agreement: December 5, 2003.
Statement of Answer filed by Respondent on or about: February 24, 2004.
Respondent signed the Uniform Submission Agreement: March 4, 2004.
Motion to Strike filed by Respondent on or about: February 24, 2004.
Response to Motion to Strike filed by Claimant on or about: March 12, 2004.
Motion to Preclude Claimant from Offering the April 2003 Letter of Acceptance Waiver and Consent filed by Respondent on or about: March 3, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of NYSE Rule 405 and NASD Rule 2310; 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; and, 5) negligence, negligent hiring, retention and supervision. The causes of action relate to the purchase of various stocks in Claimant's accounts, including, but not limited to, Applied Micro Circuits, Allegiance Telecom, AOL, Cisco Systems, EMC Corporation, Intel Corp., Oracle Corp., JDS Uniphase, Nokia, Nortel Networks and Texas Instruments.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of $350,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, costs and such other relief as this Panel deemed just and proper.

Respondent requested that the Statement of Claim be denied in its entirety, that all costs and forum fees be assessed against Claimant and an award of any other and further relief as this Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 7, 2004, the Panel issued an Order that denied, without prejudice, Respondent's Motion to Strike.

On or about March 8, 2005, during the final hearing for this matter, Claimant withdrew her request for punitive damages and Respondent withdrew its Motion to Preclude Claimant from Offering the April 2003 Letter of Acceptance, Waiver and Consent.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

AWARD

After considering the pleadings, 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 found liable for breach of fiduciary duty and shall pay to Claimant compensatory damages in the amount of $54,000.00, plus interest at the state of Florida statutory rate per annum from March 9, 2005 until the date of payment of the award.

Respondent is liable and shall pay to Claimant the sum of $300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= $1,700.00
Pre-hearing process fee	= $ 750.00
Hearing process fee	= $2,750.00

Adjournment Fees

No requests for adjournments were filed 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 cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ $450.00			= $ 450.00
Pre-hearing conference:	January 25, 2005	1 session	
One (1) Pre-hearing session with the Panel @ $1,125.00			= $1,125.00
Pre-hearing conference:	May 7, 2004	1 session	
Four (4) Hearing sessions with the Panel @ $1,125.00			= $4,500.00
Hearing Dates:	March 8, 2005	2 sessions	
	March 9, 2005	2 sessions	
Total Forum Fees			= $6,075.00

The Panel has assessed the total forum fees of $6,075.00 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 during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= $ 300.00
Total Fees	= $ 300.00
Less payments	= $ 300.00
Balance Due NASD Dispute Resolution	= $ 0.00

Respondent is solely liable for:

Member Fees	= $ 5,200.00
Forum Fees	= $ 6,075.00
Total Fees	= $ 11,275.00
Less payments	= $ 5,200.00
Balance Due NASD Dispute Resolution	= $ 6,075.00

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

ARBITRATION PANEL

Arthur J. Leibell, Esq.	-	*Public Arbitrator, Presiding Chairperson*
Melvin Jarolem	-	*Public Arbitrator*
Jonathan Seth Robbins, Esq.	-	*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

/s/
Arthur J. Leibell, Esq.
Public Arbitrator, Presiding Chairperson

03/10/05
Signature Date

/s/
Jonathan Seth Robbins, Esq.
Non-Public Arbitrator

03/10/05
Signature Date

Dissenting Arbitrator's Signature

/s/
Melvin Jarolem
Public Arbitrator

03/10/05
Signature Date

03/10/05
Date of Service (For NASD Dispute Resolution office use only)

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