
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 03-06176

Gary A. Friedman and Lisa E. Friedman, individually and jointly; Friedman and Friedman, P.A. Pension & Profit Sharing Plan, Gary A. Friedman, Trustee; Gary Friedman IRA, and Friedman Family Limited Partnership, Gary A. Friedman, General Parnter

Name of the Respondent

Hearing Site: Boca Raton, FL

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Gary A. Friedman ("GAF") and Lisa E. Friedman ("LEF"), Friedman and Friedman, P.A. Pension & Profit Sharing Plan, Gary A. Friedman, Trustee ("FFPPSP") Gary Friedman IRA ("Friedman IRA"), and Friedman Family Limited Partnership, Gary A. Friedman, General Partner ("FFLP"), hereinafter referred to as "Claimants": Robert Wayne Pearce, Esq., Robert Wayne Pearce, P.A., Boca Raton, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") hereinafter referred to as "Respondent": Alex Sabo, Esq. and Seth Alhadeff, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2003.

Claimants signed the Uniform Submission Agreement: July 9, 2003.

Motion to Dismiss, Motion to Strike and Statement of Answer filed by Respondent on or about: December 11, 2003.

Respondent did not file an executed Uniform Submission Agreement.

Response to Motion to Dismiss and Motion to Strike filed by Claimants on or about: April 14, 2004.

Amendment to Statement of Claim by Interlineation filed by Claimants on or about: May 28, 2004.

Statement of Answer to Claimants' Amendment by Interlineation filed by Respondent on or about: June 28, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) common law fraud; 3) negligence; 4) negligent supervision and 5) breach of contract. The causes of action relate to transactions that were not specified in the Statement of Claim but were made on behalf of Claimants in their accounts based upon information gained from Respondent's research reports and stock rating systems.

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

RELIEF REQUESTED

Claimants requested compensatory damages of approximately \$4,000,000.00, plus interest, punitive damages, costs and such other relief as is deemed just and proper.

Respondent requested that all claims against it be dismissed and such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

By Order dated April 20, 2004, the Panel denied Respondent's Motions to Dismiss and to Strike and required Claimants to amend paragraphs 51, 52, 53 and 54 of their Statement of Claim

The parties have agreed that the Award in this matter may be executed in counterpart copies.

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:

1. Respondent is liable and shall pay to Claimants, jointly, the sum of \$730,909.00 in compensatory damages, pre-judgment interest specifically excluded. Damages are awarded based upon the claims of breach of fiduciary duty, negligent supervision, negligent supplying of research reports, common law fraud and breach of contract.
2. Respondent is liable and shall pay to Claimants the sum of \$300,000.00 in punitive damages. Punitive damages are awarded pursuant to Mastrobuono vs. Shearson Lehman Hutton, 514 US 42 (1995) and First Interstate Development Corp. vs. Ablanedo, 511 So.2d 536 (Fla. 1987).
 - a) The Panel finds that there was clear and convincing evidence that Respondent's employees were guilty of intentional misconduct in that they had actual knowledge

that many of the companies for which they were issuing and/or maintaining ratings of 1,2 or 3 during the relevant period of time were, in reality, overvalued by this rating system.

b) The Panel further finds that said employees knew or should have known that Claimants were relying, at least in part, upon this rating system in making their decisions on whether to buy, sell or hold securities and that they were likely to suffer financial harm as a result of reliance upon the skewed rating system.

c) Finally, the Panel finds that managers of Respondent knowingly condoned, ratified and consented to the conduct of its employees.

3. Any and all claims for relief not specifically addressed herein, 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 = \$ 600.00

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 MLPFS is a member firm and a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed.

No adjournment fees were incurred during these proceedings.

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 during these proceedings.

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 during these proceedings.

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:

Eight (8) Pre-hearing sessions with the Panel @ \$1,200.00	= \$9,600.00
Pre-hearing conferences:	
January 14, 2004	1 session
April 19, 2004	1 session
June 22, 2004	1 session
November 23, 2004	1 session
November 24, 2004	2 sessions
December 7, 2004	1 session
December 9, 2004	1 session
Ten (10) Hearing sessions with the Panel @ \$1,200.00	= \$12,000.00
Hearing Dates:	
January 24, 2005	2 sessions
January 25, 2005	2 sessions
January 26, 2005	2 sessions
January 27, 2005	2 sessions
January 28, 2005	2 sessions
<hr/> Total Forum Fees	<hr/> = \$21,600.00

The Panel has assessed \$10,800.00 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$10,800.00 of the forum fees 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 are 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 these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$10,800.00
Total Fees	= \$11,400.00
Less payments	= \$ 2,800.00
Balance Due NASD Dispute Resolution	= \$ 8,600.00

Respondent is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$10,800.00</u>
Total Fees	= \$19,350.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$10,800.00

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

ARBITRATION PANEL

Alyson R. Dachelet, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard A. Barthlette, J.D.	-	Public Arbitrator
Sharon L. McKinney	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

 /s/
Alyson R. Dachelet, Esq.
Public Arbitrator, Presiding Chairperson

February 16, 2005
Signature Date

 /s/
Richard A. Barthlette, J.D.
Public Arbitrator

February 17, 2005
Signature Date

 /s/
Sharon L. McKinney
Non-Public Arbitrator

February 17, 2005
Signature Date

February 17, 2005
Date of Service (For NASD Dispute Resolution office use only)

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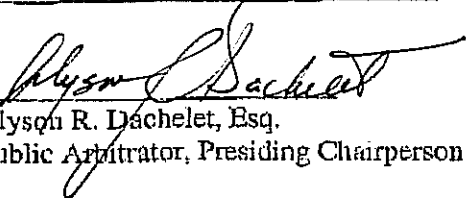
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Public Arbitrator, Presiding Chairperson

2/16/05
Signature Date

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Public Arbitrator

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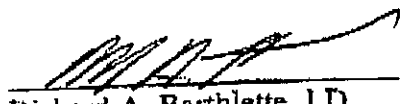
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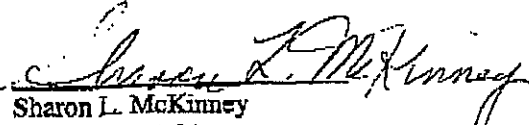
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