

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Helen Alpert

Case Number: 07-01049

Names of the Respondents
Merrill Lynch Pierce Fenner & Smith, Inc.
Max G. Manack
Byron Meads
John Wyllys
Doria Sabia-Florence
Jeffrey S. Ransdell

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

For Helen Alpert, hereinafter referred to as "Claimant": Darren C. Blum, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent MLPFS"), Max G. Manack ("Respondent Manack"), Byron Meads ("Respondent Meads"), and John Wyllys ("Respondent Wyllys"): Neil S. Baritz, Esq., Baritz & Colman LLP, Boca Raton, Florida.

For Respondent Doria Sabia-Florence ("Respondent Sabia-Florence"): Ronald Shindler, Esq., Fowler White Burnett P.A., Miami, Florida until December 4, 2007, thereafter, Respondent Sabia-Florence appeared pro se.

Respondent Jeffrey S. Ransdell ("Respondent Ransdell") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: March 28, 2007.

Claimant signed the Uniform Submission Agreement: March 28, 2007.

First Amended Statement of Claim filed on or about: May 11, 2007.

Second Amended Statement of Claim filed on or about: May 30, 2007.

Statement of Answer, Affirmative Defenses, and Motion to Dismiss or For a More Definite Statement of Claim filed by Respondents MLPFS, Manack, Meads, and Wyllys on or about: July 27, 2007.

Claimant's Motion to Bar Respondent Doria Sabia-Florence from Responding filed on or about: July 31, 2007.

Respondent Manack signed the Uniform Submission Agreement on or about: August 7, 2007.

Respondent MLPFS signed the Uniform Submission Agreement on or about: August 10, 2007.

Respondent Meads signed the Uniform Submission Agreement on or about: August 14, 2007.

Respondent Wyllys signed the Uniform Submission Agreement on or about: October 23, 2008.

Statement of Answer filed by Respondent Sabia-Florence on or about: September 14, 2007.

Respondent Sabia-Florence signed the Uniform Submission Agreement on or about: September 24, 2007.

Respondent Sabia-Florence's Opposition to Claimant's Motion to Bar filed on or about: October 15, 2007.

Motion to Dismiss Claims Under Chapter 415 of the Florida Statutes and Motion to Strike Claims for Non-Economic Damages filed by Respondents MLPFS, Manack, Meads, and Wyllys on or about: April 10, 2008.

Claimant's Response to Respondents Manack, Meads and Wyllys' [Second] Motion to Dismiss filed on or about: April 18, 2008.

Respondents MLPFS, Manack, Meads and Wyllys' Reply to Claimant's Response to Motion to Dismiss filed on or about: April 21, 2008.

Emergency Motion to Dismiss, or in the Alternative, to Permit Videotape Deposition filed by Respondents MLPFS, Manack, Meads, and Wyllys on or about: October 8, 2008.

Respondent Ransdell did not file a Statement of Answer or executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; negligent supervision, retention and hiring; violation of industry rules, including but not limited to the NYSE's Rule 405 and NASD's Rule 2310; breach of contract; common law fraud; violation of Chapter 517 of the Florida Statutes; violation of Chapter 415.101 through 415.113 of the Florida Statutes; and, violation of Chapter 430.03(11) of the Florida Statutes. The causes of action relate to, among other things, Claimant's investments in MLPFS proprietary products and Respondent Sabia-Florence's misappropriation of funds from Claimant's account.

Unless specifically admitted in their respective Answers, Respondents MLPFS, Manack, Meads, Wyllys, and Sabia-Florence denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested: 1) unspecified compensatory damages; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) rescission; 4) unspecified punitive damages; 5) attorneys' fees; 6) the costs of this proceeding; 7) damages based on emotional distress; and 8) such other relief as is just and proper.

At the close of the hearing, Claimant clarified her relief request as follows: compensatory damages in the amount of \$358,575.00; punitive damages in the amount of \$1,075,725.00 and attorneys' fees in the amount of \$370,290.00.

In their Answer to the Statement of Claim, as amended, Respondents MLPFS, Manack, Meads and Wyllys requested: 1) dismissal of this action in its entirety; 2) a specific

finding that Respondents MLPFS, Manack, Meads and Wyllys are the prevailing parties with regard to claims under Chapter 517 of the Florida Statutes; 3) expungement of this matter from individual Respondents Manack, Meads and Wyllys' records maintained by the Central Registration Depository ("CRD"); 4) costs incurred in connection with the defense of this matter; and, 5) such further relief as the Panel deemed just and proper.

In her Answer to the Statement of Claim, as amended, Respondent Sabia-Florence requested that the claims against her, as well as Respondent MLPFS, be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant amended her Statement of Claim on May 11, 2007, for the purpose of, among other things, adding Jeffrey S. Ransdell and Max G. Manack as additional Respondents in this matter. Thereafter, and prior to receipt of any Answer, Claimant again amended her Statement of Claim for the purpose of, among other things, removing Jeffrey S. Ransdell as a Respondent and adding Bryon Meads and John Wyllys as Respondents.

Respondents MLPFS, Manack, Meads and Wyllys filed a Motion to Dismiss or for a More Definite Statement of Claim within their Statement of Answer, in which they asserted, among other things, that the generalized allegations fail to support a cause of action or to meet even the most generous pleading standard. Respondent Sabia-Florence joined in this motion. Claimant did not file a written response. After careful consideration, on or about September 10, 2007, the Panel issued an Order that, among other things, denied the motion.

Claimant filed a Motion to Bar Respondent Sabia-Florence from Responding to the Statement of Claim, in which Claimant asserted that Respondent Sabia-Florence should be precluded from presenting any matter, argument, or defenses for her failure to file a timely Answer. In response, Respondent Sabia-Florence asserted that Claimant has not been prejudiced by her delay in filing her Statement of Answer. After careful consideration, on or about October 29, 2007, the Panel issued an order denying Claimant's motion.

Respondents MLPFS, Manack, Meads and Wyllys filed a Motion to Dismiss Claims Under Chapter 415 of the Florida Statutes and Motion to Strike Claims for Non-economic Damages. Therein, Respondents MLPFS, Manack, Meads and Wyllys asserted that Claimant has failed to state a claim and has no cause of action under Chapter 415 of the Florida Statutes. In response, Claimant asserted that the arguments in this Motion to Dismiss are identical arguments Respondents made in their first Motion to Dismiss, which the Panel denied. After careful consideration, on or about May 1, 2008, the Panel issued an Order that, among other things, denied the motion.

At the outset of the evidentiary hearing, on May 5, 2008, Claimant's counsel notified the Panel that Claimant was not available for testimony and, in fact, had relocated to Charlotte, North Carolina. Additionally, Respondent Sabia-Florence did not appear. Respondents MLPFS, Manack, Meads and Wyllys moved to adjourn the evidentiary hearing to a time when Claimant could either be available for testimony or a deposition. After careful consideration, the Panel denied Respondents MLPFS, Manack, Meads and Wyllys' adjournment request and proceeded with the evidentiary hearing. However,

the Panel issued an Order directing Claimant to appear for testimony at a future date, either in person or via video deposition, with Claimant's counsel providing FINRA Dispute Resolution ("FINRA") three dates for Claimant to appear for testimony or video deposition, by May 12, 2008. The Panel further ordered that Respondent Sabia-Florence must appear for testimony, but in the event that Respondent Sabia-Florence is unable to travel, Respondent Sabia-Florence must testify via video deposition. Additionally, the Panel ordered that Respondent MLPFS' and Claimant's counsel make every effort to contact Respondent Sabia-Florence in order to schedule either a personal appearance or video deposition and notify FINRA of their efforts by May 12, 2008.

On or about May 12, 2008, Claimant's counsel notified FINRA that Claimant would be available for testimony and provided three sets of dates that the parties had agreed upon to continue the evidentiary hearing.

On or about July 31, 2008, Respondent MLPFS' counsel notified FINRA that he, along with Claimant's counsel, had made every effort to secure Respondent Sabia-Florence's testimony. To that end, Respondent Sabia-Florence represented, through an attorney, that she is awaiting sentencing and she would neither sit for a deposition nor appear at the evidentiary hearing in this matter.

On or about October 8, 2008, Claimant filed with FINRA Claimant's Notice of Unavailability for in-person testimony pursuant to doctor's orders and notice of availability for telephonic testimony. On or about October 8, 2008, Respondents MLPS, Manack, Meads and Wyllys filed with FINRA, Notice of Claimant's Unavailability and Emergency Motion to Dismiss, or in the Alternative, to Permit Videotape Deposition. On or about October 9, 2008, Claimant filed with FINRA a request that Respondents' motion be withheld from the Panel until Claimant could respond at the evidentiary hearing.

On or about October 9, 2008, FINRA notified the Panel of the parties' October 8, 2008 filings. Thereafter, the Panel issued an Order directing FINRA to forward Claimant's Notice of Unavailability and Respondents MLPFS, Manack, Meads and Wyllys' October 8, 2008 Motion to the Panel. Further, the Order stated that if Claimant does not appear for testimony at the evidentiary hearings scheduled for October 14 -17, 2008, the Panel would consider Respondents' Motion to Dismiss, with prejudice, and without any further testimony from the parties.

At the outset of the evidentiary hearings, on or about October 14, 2008, Claimant's counsel requested that the Panel permit Claimant to appear telephonically and presented to the Panel a second doctor's letter attesting to Claimant's unavailability to travel to the evidentiary hearing. Respondents MLPFS, Manack, Meads and Wyllys objected and requested the Panel order Claimant to appear for a video deposition, at a later date, if the Panel did not grant Respondents' Motion to Dismiss. After careful consideration, the Panel ordered that Claimant appear via video conference. On or about October 15, 2008, Claimant appeared and testified via video conference.

Respondent Sabia-Florence did not appear or testify at the evidentiary hearings. Upon review of the file and the representations made by/on behalf of Claimant and Respondent MLPFS, the Panel determined that Respondent Sabia-Florence had been properly served with the Statement of Claim, answered the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent Sabia-Florence present, in accordance with the Code of Arbitration Procedure (the "Code").

On or about October 17, 2008, the Panel issued an Order that required the parties to submit to FINRA, by close of business on October 22, 2008, their respective itemized costs incurred in this matter. On or about October 22, 2008, the parties complied with the Panel's Order.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel has determined that Respondent MLPFS acted promptly and in good faith to return all identifiable funds stolen by Respondent Sabia-Florence from Claimant along with an investment rate of return during the time said funds were missing from Claimant's account(s) at Respondent MLPFS. Respondent Sabia-Florence has pled guilty in Federal Court, was sentenced to serve time in prison and ordered to pay restitution to Respondent MLPFS for funds stolen by Respondent Sabia-Florence from Claimant.

Furthermore, the Panel has determined that Claimant failed to present sufficient evidence to prove claims of failure to supervise; unsuitability; breach of fiduciary duty; negligent supervision, retention and hiring; violation of industry rules, including but not limited to the NYSE's Rule 405 and NASD's Rule 2310; breach of contract; common law fraud; violation of Chapter 517 of the Florida Statutes; violation of Chapter 415.101 through 415.113 of the Florida Statutes; and, violation of Chapter 430.03(11) of the Florida Statutes by Respondents MLPFS, Manack, Meads and Wyllys. Accordingly, with respect to Respondents MLPFS, Manack, Meads and Wyllys, Claimant's claims are denied in their entirety and dismissed with prejudice.

With respect to Respondent Sabia-Florence, the Panel has determined that her actions alone caused this arbitration claim to be filed and that an award of all attorneys' fees be granted to both Claimant and Respondents as described below.

Claimant and Respondents MLPFS, Manack, Meads and Wyllys' respective requests for attorneys' fees are granted pursuant to Chapter 517 of the Florida Statutes. Respondent Sabia-Florence is solely liable for all attorneys' fees with the amounts to be determined by a court of competent jurisdiction.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Manack, Meads and Wyllys' registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondents Manack, Meads and Wyllys must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 2130 of the Code, the Panel has made the following affirmative findings of fact:

Respondents Manack, Meads and Wyllys were not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds. Respondent Sabia-Florence was solely responsible for these acts.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial claim filing fee = \$1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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 persons at the time of the events giving rise to the dispute. Respondent MLPFS is a member and a party. Accordingly, the following member fees are assessed:

Member surcharge = \$2,250.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,200.00

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.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Two (2) Decisions on discovery-related motions on the papers with (3) three arbitrators @ \$600.00	= \$1,200.00
Claimant submitted two discovery-related motions.	
<hr/> Total Discovery-Related Motion Fees	<hr/> = \$1,200.00

The Panel has assessed \$600.00 of the discovery-related motion fees to Claimant.
The Panel has assessed \$600.00 of the discovery-related motion fees to Respondent MLPFS.

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena (1) one arbitrator @ \$200.00	= \$ 200.00
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The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees to Claimant.
The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees to Respondent MLPFS.

Hearing Session Fees and Assessments

The Panel has assessed hearing session 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:

Three (3) Pre-hearing sessions with Panel @ \$1,000.00/session	= \$ 3,000.00
Pre-hearing conferences: October 4, 2007	1 session
December 17, 2007	1 session
April 4, 2008	1 session
Twelve (12) Hearing sessions @ \$1,000.00/session	= \$12,000.00
Hearing Dates: May 5, 2008	2 sessions
May 6, 2008	2 sessions

May 7, 2008	2 sessions
October 14, 2008	2 sessions
October 15, 2008	2 sessions
October 16, 2008	2 sessions

Total Hearing Session Fees = \$15,000.00

The Panel has assessed \$15,000.00 of the hearing session fees jointly and severally to Claimant and Claimant's Counsel, The Law Firm of Blum & Silver, LLP.

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.

Administrative costs were incurred in this matter for 4 hours of video conferencing of Claimant on October 15, 2008 @ \$200.00 per hour = \$ 800.00

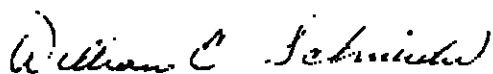
The Panel has assessed \$800.00 of the administrative costs jointly and severally to Claimant and Claimant's Counsel, The Law Office of Blum & Silver, LLP.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

William E. Schneider - *Public Arbitrator, Presiding Chairperson*
Carolyn E. Moore - *Public Arbitrator*
Susan M. Dunning - *Non-Public Arbitrator*

Concurring Arbitrators' Signatures



William E. Schneider
Public Arbitrator, Presiding Chairperson

10/29/2008
Signature Date

Carolyn E. Moore
Public Arbitrator

Signature Date

Susan M. Dunning
Non-Public Arbitrator

Signature Date

May 7, 2008	2 sessions
October 14, 2008	2 sessions
October 15, 2008	2 sessions
October 16, 2008	2 sessions

Total Hearing Session Fees = \$15,000.00

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Administrative costs were incurred in this matter for 4 hours of video conferencing of Claimant on October 15, 2008 @ \$200.00 per hour = \$ 800.00

The Panel has assessed \$800.00 of the administrative costs jointly and severally to Claimant and Claimant's Counsel, The Law Office of Blum & Silver, LLP.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

<i>William E. Schneider</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Carolyn E. Moore</i>	-	<i>Public Arbitrator</i>
<i>Susan M. Dunning</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

William E. Schneider
Public Arbitrator, Presiding Chairperson

Signature Date

Carolyn Moore
Carolyn E. Moore
Public Arbitrator

October 29, 2008
Signature Date

Susan M. Dunning
Non-Public Arbitrator

Signature Date

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