

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Bobby L. Hayes
Bobby L. Hayes Living Trust

Case Number: 11-00432

vs.

Respondents

Banc of America Securities LLC
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Reno, Nevada

Nature of the Dispute: Customers vs. Members

The case proceeded under the Majority Public Panel Rule/Majority Public Panel.

REPRESENTATION OF PARTIES

Claimants Bobby L. Hayes and Bobby L. Hayes Living Trust, hereinafter collectively referred to as "Claimants": Thomas C. Bradley, Esq., Sinai, Schroeder, Mooney, Boetsch, Bradley & Pace, Reno, Nevada.

Respondent Banc of America Securities LLC ("Banc of America"): Aquilino Magliocco, Banc of America Securities LLC, New York, New York.

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"): Rodney Acker, Esq., Fulbright & Jaworski LLP, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: January 25, 2011

Amended Statement of Claim filed on or about: February 10, 2011

Claimants signed the Submission Agreement: April 8, 2011

Statement of Answer filed by Respondent Merrill Lynch on or about: April 5, 2011

Respondent Merrill Lynch signed the Submission Agreement: February 23, 2011

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CASE SUMMARY

Claimants asserted the following causes of action: breach of written and oral contracts; fraud; breach of fiduciary duty; negligence; failure to supervise and control; consumer fraud; and state securities violations. The causes of action relate to Claimants' investment in Lyon Capital Management ("LCM").

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

RELIEF REQUESTED

In the Amended Statement of Claim, Claimants requested:

1. Compensatory damages in an amount not less than \$883,122.50;
2. Lost opportunity cost in an amount according to proof;
3. Rescission of the LCM investment;
4. Costs;
5. Punitive damages according to proof;
6. Interest at the legal rate;
7. Attorneys' fees; and
8. Such other relief as the Panel deems just and proper.

In its Answer, Respondent Merrill Lynch requested:

1. Dismissal of Claimants' claims;
2. Costs; and
3. Forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

In the Statement of Claim, Claimants named only Banc of America Securities LLC as a Respondent. In their Amended Statement of Claim, Claimants added Merrill Lynch, Pierce, Fenner & Smith Incorporated as a Respondent, and removed Banc of America Securities LLC as a Respondent.

On December 22, 2011, Respondent Merrill Lynch submitted a Motion to Disqualify "Expert Witness" Craig McCann. On December 29, 2011, Claimants submitted an Opposition to Respondent Merrill Lynch's Motion to Disqualify "Expert Witness" Craig McCann. By Order dated January 2, 2012, the Panel denied Respondent's Motion to Disqualify "Expert Witness" Craig McCann.

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.

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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:

1. Respondent Merrill Lynch is solely liable for and shall pay to Claimants total rescissionary damages in the amount of \$1,134,791.24. This amount includes rescissionary damages in the amount of \$883,122.50, plus rescissionary interest in the amount of \$251,668.74. The amount of rescissionary interest awarded was calculated semi annually ranging from 5.25% to 10.25% from August 1, 2007 through January 9, 2012, per Nevada statutes.
2. Respondent Merrill Lynch is solely liable for and shall pay to Claimants attorneys' fees in the amount of \$218,344.00 in accordance with Nevada Revised Statute 90.660.
3. Respondent Merrill Lynch is solely liable for and shall pay to Claimants costs in the amount of \$23,500.00.
4. Respondent Merrill Lynch is solely liable for and shall pay to Claimants the sum of \$375.00 as reimbursement for the non-refundable portion of the initial claim filing fee.
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

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

Initial Claim filing fee	=\$ 1,575.00
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**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Banc of America Securities LLC are assessed the following:

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Member Surcharge	=\$ 2,250.00
Pre-Hearing Processing Fee	=\$ 750.00
Hearing Processing Fee	=\$ 4,000.00

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Banc of America Securities LLC
Member Surcharge

= \$ 2,250.00

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:

One (1) Pre-hearing session with the Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: June 27, 2011 1 session

Six (6) Hearing sessions @ \$1,200.00/session = \$ 7,200.00
Hearing Dates: January 9, 2012 2 sessions
January 10, 2012 2 sessions
January 11, 2012 2 sessions

Total Hearing Session Fees = \$ 8,400.00

1. The Panel has assessed \$600.00 of the hearing session fees jointly and severally to the Claimants.
2. The Panel has assessed \$7,800.00 of the hearing session fees to Respondent Merrill Lynch.

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

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ARBITRATION PANEL

James F. Zotter	-	Public Arbitrator, Presiding Chairperson
Martin J. Kotowski	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

James F. Zotter
Public Arbitrator, Presiding Chairperson

Signature Date

Martin J. Kotowski
Public Arbitrator

Signature Date

1/25/12

Richard B. Bullock
Non-Public Arbitrator

Signature Date

1-31-12
Date of Service (For FINRA Dispute Resolution office use only)

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