

**Merrill Lynch, Pierce, Fenner & Smith v  
Sudaka-Karlsson**

2008 NY Slip Op 33400(U)

December 14, 2008

Supreme Court, New York County

Docket Number: 112826/08

Judge: Michael D. Stallman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PART 7

Index Number : 112826/2008

**MERRILL LYNCH**

vs.

**SUDAKA-KARLSSON, JANEEN A.**

SEQUENCE NUMBER : 001

CONFIRM AWARD

INDEX NO. \_\_\_\_\_

MOTION DATE 10/28/08

MOTION SEQ. NO. 001

MOTION CAL. NO. 68

this motion to/for confirm arbitration award

Notice of <sup>Petition</sup> ~~Motion~~ Order to Show Cause — Affidavits — Exhibits A-I

Answering Affidavits — Exhibits A-T

Replying Affidavits - Exhibits A-I

PAPERS NUMBERED	
1-2	
3-4	
5	


Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this <sup>Petition</sup> motion and special proceeding are determined according to the unrefuted memorandum opinion (Decision, Order and Judgment).

**UNFILED JUDGMENT**  
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141E).

**MICHAEL D. STALLMAN**  
 J.S.C.

Dated: 12/14/08

  
 \_\_\_\_\_  
 J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 7

-----X  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC., LINUS G. COOKE, JOHN D.  
OLSON. ERIC W. PESKE, LISA M. FELD,  
and MARIA R. FRATTAROLI,

Index No.: 112826/08

DECISION, ORDER  
AND JUDGMENT

Petitioners,

- against -

JANEEN A. SUDAKA-KARLSSON,

Respondent,

CITIGROUP GLOBAL MARKETS, INC.,  
MARCELO C. IPPOLITI, ARTHUR A. AUCH,  
KELLY A. WALSH, JAMES E. DUCEY,  
CATHERINE M. MAGUIRE, KAREN G.  
SIANNAS, JAMES LOMBARDI, CHRISTINE  
K. CUNNINGHAM, THOMAS DUDDIE,  
KATHERINE M. FERRARO, SIDNEY GOODMAN,  
PHILIP J. GULLO, JELMENA ORINTH,  
HUDSON, JOSEPH J. PLUMERI, RICHARD L.  
ECKLUND a/k/a RICHARD ALAN PETIT, and  
JP MORGAN CHASE BANK,

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. To  
obtain entry, counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
1473).

Respondents for Notice  
Purposes.

-----X  
**HON. MICHAEL D. STALLMAN, J.:**

Petitioners, a brokerage house and several of its financial  
advisor employees, seek, pursuant to CPLR 7510, to confirm an  
arbitration award entered by a Financial Industry Regulatory  
Authority (FINRA) arbitration panel on March 31, 2007.

**BACKGROUND**

Respondent filed a Statement of Claim with FINRA on July 7,  
2007, alleging that petitioners, along with other brokerage houses,  
conspired with her ex-husband to swindle her, and her ex-husband's

employees, out of huge sums of money. Respondent, acting pro se both at the FINRA arbitration and in the instant opposition, sought damages in the amount of \$17,000,000.

An arbitration hearing was held on March 11, 2007, after which the panel determined that the matter was time-barred, the occurrences alleged by respondent having taken place more than six years prior to the institution of the arbitration. Consequently, the claim was dismissed. Additionally, the panel determined that the claims against the individual financial advisors were baseless, and that the matter should be expunged from their records. It is noted that, in order to effectuate that expungement, the award must be confirmed by a court of competent jurisdiction.<sup>1</sup>

Respondent did not seek judicial review of the arbitrators' decision. Respondent asserts that she was never told that she had only 90 days in which to seek judicial review of the arbitrators' determination, which she claims was a breach of the arbitrators' fiduciary obligation to her as a pro se claimant. Respondent further alleges that petitioners engaged in a series of swindles with her ex-husband, but fails to identify any such action with specificity.

FINRA Rule 12206 (a) specifies that "[n]o claim shall be

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<sup>1</sup> By letter dated August 28, 2008, FINRA approved petitioners' request to waive the obligation to name FINRA as a party in judicial confirmation of the expungement relief contained in the award. See Verified Petition, Ex I.

eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim."

Prior to making its determination, the arbitration panel engaged in lengthy discovery, and over 3,400 pages of documents were turned over to respondent. After hearing testimony from respondent, the panel determined that the matter was time-barred, pursuant to FINRA Rule 12206 (a). The panel further decided that the claims and allegations against the individual financial advisors, with the exception of Richard L. Ecklund a/k/a Richard Alan Petit, who did not appear, were factually impossible or clearly erroneous, and none was involved in any investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds, and that all reference to this matter should be expunged from these individuals' records.

#### **DISCUSSION**

Although respondent failed to seek judicial review to vacate the arbitration award within the legally permissible time period, pursuant to CPLR 7511 (a), she is entitled to oppose the instant petition to confirm that award.

The grounds for overturning an arbitration award are limited and specifically enumerated in CPLR 7511 (b): one, corruption, fraud or misconduct in procuring the award; two, partiality of an arbitrator; three, an award that exceeds the arbitrator's power;

and four, the arbitrator failing to follow the procedures of Article 75 of the CPLR.

The function of any court in a proceeding to overturn an arbitration award "is not to decide the appropriateness or wisdom of the award or whether the judges of a court would have rendered the same award had they acted as arbitrators but, rather, to ascertain whether the arbitrator who did make the award exceeded his powers or so imperfectly executed them as to require vacatur." *In the Matter of Marine Lines, Inc. (Crooks)*, 13 NY2d 206, 212 (1963). As a general rule, "[a]n arbitration award may not be vacated unless it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *Matter of Board of Education of the Arlington Central School District v Arlington Teachers Association*, 78 NY2d 33, 37 (1991). More simply stated, "[a] court ... may not set aside an arbitrator's decision merely because it may disagree with the merits or appropriateness of the arbitrator's findings and award." *Board of Education of Central School District No. 1 of the Towns of Niagara, Wheatfield, Lewiston and Cambria v Niagara Wheatfield Teachers Association*, 54 AD2d 281, 284 (4<sup>th</sup> Dept 1976).

As long as any plausible basis exists for an arbitration award, the court may not vacate it. *Azrielant v Azrielant*, 301 AD2d 269, 275 (1<sup>st</sup> Dept 2002). Consequently, the party seeking to overturn the arbitration award has a heavy burden to vacate that

award. See *Lehman Bros., Inc. v Cox*, 10 NY3d 743 (2008).

Respondent has failed to evidence any grounds that would allow the Court to overturn the arbitration award. Respondent's only contention is that alleged misconduct with respect to her ex-husband's company's employee retirement plan occurred within the six year period; however, respondent is not and was not an employee covered by the plan, and the panel determined that she had no standing to complain about any transactions associated with that plan. Respondent does not dispute the conclusion that the other events complained of occurred more than six years prior to the filing of her FINRA claim. Respondent has made conclusory allegations of fraud, conspiracy, bias and conflict of interest, with no substantiating evidence, which is ineffective to overturn the award. See *Aviles v Allstate Insurance Company*, 47 AD3d 710 (2d Dept 2008); *Rose v J.J. Lowrey & Co.*, 181 AD2d 418 (1<sup>st</sup> Dept 1992).

Based on the foregoing, the Court grants the petition to confirm the arbitration award.

#### **CONCLUSION**

It is hereby

ADJUDGED that the petition to confirm the arbitration award is granted, and the arbitration award entered by FINRA on March 31, 2007, in the proceeding entitled *Janeen Alice Sudaka-Karlsson*,

Claimant v Merrill Lynch, Pierce, Fenner & Smith, Incorporated,  
 Linus G. Cooke, John D. Olson, Erik W. Peske, Citigroup Global  
 Markets, Inc., Marcelo C. Ippoliti, Arthur A. Auch, Kelly A. Walsh,  
 James F. Ducey, Catherine M. Maguire, Karen G. Siannas, James  
 Lombardi, Lisa M. Feld, Maria R. Frattaroli, Christine K.  
 Cunningham, Thomas Duddie, Richard L. Ecklund a/k/a Richard Alan  
 Petit, Katherine M. Ferraro, S. Goldman, Philip J. Gullo, Jelmena  
 Orinthia Hudson, Joseph J. Plumeri, and JP Morgan Chase Bank,  
 Respondents, FINRA Dispute Resolution Arbitration No. 07-00916, is  
 confirmed, and it is further

ORDERED that all references to the above-referenced FINRA  
 Dispute Resolution Arbitration No. 07-00916 be expunged from the  
 respective registration records of petitioners Linus G. Cooke, John  
 D. Olson, Eric W. Peske, Lisa M. Feld, and Maria R. Frattaroli  
 maintained by FINRA's Central Registration depository, upon service  
 of a copy of this decision, order, and judgment with notice of  
 entry upon FINRA.

Dated: December 14, 2008  
 New York, New York

ENTER:



Michael D. Stallman, J.S.C.

**UNFILED JUDGMENT**  
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141D).  
**MICHAEL D. STALLMAN**  
**J.S.C.**