

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

John E. Latus and Sheila E. Latus Trust, Claimant v. Merrill Lynch Pierce Fenner & Smith Inc.
and Andrew M. Cunningham, Respondents

Case Number: 00-01038

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimant:

Catherine L. Bland, Esq.
Law Offices of Paul W.
Thomas & Associates
Carlsbad, California

For Respondents:

Michael E. Olney, Esq.
Merrill Lynch Pierce Fenner
& Smith Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: March 1, 2000

Claimant's Uniform Submission Agreement signed: February 8, 2000

Joint Statement of Answer filed by Respondents: May 30, 2000

Respondent Merrill Lynch Pierce Fenner & Smith Inc.'s Uniform Submission Agreement signed:
May 30, 2000

Respondent Andrew M. Cunningham's Uniform Submission Agreement signed: April 7, 2000

CASE SUMMARY

Claimant alleged negligence, fraud, and misrepresentation. The dispute involved the purchase and/or sale of Qualcomm stock.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested \$119,275.00 in compensatory damages. Claimant also requested interest and reimbursement for attorney's fees and arbitration costs.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety. Respondent Andrew M. Cunningham requested expungement of all reference to this arbitration from his CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1) Claimant's claims are denied in their entirety.

2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Andrew M. Cunningham's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Andrew M Cunningham must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3) The parties shall bear their respective costs, including attorney's fees.

4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch Pierce Fenner & Smith Inc. is a party the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$ 1,125.00/session	= \$ 1,125.00
Pre-hearing conference: December 4, 2000 1 session	

4 Hearing sessions @ \$ 1,125.00/session	= \$ 4,500.00
Hearings: June 6, 2001 2 sessions	
June 7, 2001 2 sessions	

Total Forum Fees	= \$ 5,625.00
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The Panel assessed \$ 5,625.00 of the forum fees to Claimant John E. Latus and Sheila E. Latus Trust.

Fee Summary

1. Claimant John E. Latus and Sheila E. Latus Trust is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,625.00
Total Fees	= \$ 5,925.00
<u>Less Payments</u>	= \$ (1,425.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,500.00

2. Respondent Merrill Lynch Pierce Fenner & Smith Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less Payments</u>	= \$(2,100.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,500.00

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


ARBITRATION PANEL

<i>James P. Murphy</i>	Public, Presiding Chair
<i>Katherine Jane Morris</i>	Public Arbitrator
<i>Terry D. Anderson</i>	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James P. Murphy
Chair, Public Arbitrator

6/14/01
Signature Date


Katherine Jane Morris
Public Arbitrator

6/13/01
Signature Date

Terry D. Anderson
Non-Public Arbitrator


Signature Date

6.14.01
Date of Service

ARBITRATION PANEL

<i>James P. Murphy</i>	-	<i>Public, Presiding Chair</i>
<i>Katherine Jane Morris</i>	-	<i>Public Arbitrator</i>
<i>Terry D. Anderson</i>	-	<i>Non-Public Arbitrator</i>

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