

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Ramin Pourteymour, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

Case Number: 00-03831

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimant:

James R. Ballard, Esq.
Schwartz Semerdjian & Haile, LLP
San Diego, California

For Respondent:

Thomas L. Taylor, III, Esq.
Marcela L. Cuadrado, Esq.
Morgan, Lewis & Bockius
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 17, 2000

Amended Statement of Claim filed: April 30, 2001

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

Statement of Answer to Statement of Claim filed by Respondent: November 8, 2000

First Amended Statement of Answer to Amended Statement of Claim filed by Respondent:
June 5, 2001

Respondent's Uniform Submission Agreement signed: October 5, 2000

CASE SUMMARY

In his Amended Statement of Claim, Claimant alleged breach of fiduciary duty, professional negligence, breach of contract, and Unfair Business Practices. The dispute involved Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s online trading system and various securities.

Respondent denied the allegations of wrongdoing set forth in Claimant's Original and Amended Statements of Claim.

RELIEF REQUESTED

In his Original Statement of Claim and as specified in the Claim Information Sheet, Claimant requested compensatory damages of \$1,700,000.00, punitive damage in the amount of \$5,000,000.00, attorney's fees, and arbitration costs.

In his Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$1,600,000.00.

Respondent requested dismissal of Claimant's Original and Amended Statements of Claim in their entirety and reimbursement for attorney's fees and arbitration costs.

OTHER ISSUES CONSIDERED AND DECIDED

On October 8, 2002, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 15, 2002, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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) Respondents is liable to and shall pay Claimant \$272,708.50 in compensatory damages.
- 2) Claimant's request for punitive damages is denied.
- 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 received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 600.00 |
|--------------------------|-------------|

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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

| | |
|--------------------------|----------------------|
| Member Surcharge | = \$ 3,000.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| Hearing Process Fee | = \$ 5,000.00 |
| Total Member Fees | = \$ 8,600.00 |

Adjournment Fees

The following adjournment fees are assessed:

| | |
|--|---------------|
| Hearing Dates, October 29, 2001 – November 2, 2001 Stipulated Motion for Postponement | = \$ 1,200.00 |
| Hearing Dates, April 8, 2002 – April 12, 2002 adjournment requested by Claimant | = \$ 1,200.00 |
| Hearing Dates, June 10, 2002 – June 14, 2002 adjournment requested by Respondent | = \$ 1,200.00 |

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:

| | |
|---|-----------------------|
| (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session | = \$ 2,400.00 |
| Pre-hearing conferences: April 19, 2001 1 session | |
| September 16, 2002 1 session | |
| (23) Hearing sessions @ \$1,200.00/session | = \$ 27,600.00 |
| Hearings: January 13, 2003 2 sessions | |
| January 14, 2003 2 sessions | |
| January 15, 2003 2 sessions | |
| January 16, 2003 2 sessions | |
| January 17, 2003 2 sessions | |
| April 21, 2003 2 sessions | |
| April 22, 2003 2 sessions | |
| April 23, 2003 2 sessions | |
| April 24, 2003 2 sessions | |
| April 25, 2003 2 sessions | |
| April 28, 2003 2 sessions | |
| April 29, 2003 1 session | |
| Total Forum Fees | = \$ 30,000.00 |

1. The Panel assessed \$10,000.00 of the forum fees to Claimant Ramin Pourteymour.
2. The Panel assessed \$20,000.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

1. Claimant Ramin Pourteymour is charged with the following fees and costs:

| | |
|--|----------------------|
| Initial Filing Fee | = \$ 600.00 |
| Forum Fees | = \$ 10,000.00 |
| <u>Postponement Fees</u> | = \$ 1,800.00 |
| Total Fees | = \$ 12,400.00 |
| <u>Less payments</u> | = \$(2,925.00) |
| Balance Due NASD Dispute Resolution | = \$ 9,475.00 |

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

| | |
|--|-----------------------|
| Member Fees | = \$ 8,600.00 |
| Adjournment Fees | = \$ 1,800.00 |
| <u>Forum Fees</u> | = \$ 20,000.00 |
| Total Fees | = \$ 30,400.00 |
| <u>Less payments</u> | = \$(11,000.00) |
| Balance Due NASD Dispute Resolution | = \$ 19,400.00 |

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

ARBITRATION PANEL

| | | |
|---------------------------|---|--|
| David Maurer, Esq. | - | Non-Public Arbitrator, Presiding Chair |
| Charles E. Rumbaugh, Esq. | - | Public Arbitrator |
| William D. Randolph | - | Public Arbitrator |

Concurring Arbitrators' Signatures



Charles E. Rumbaugh, Esq.
Public Arbitrator

5/8/03
Signature Date

William D. Randolph
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

David Maurer, Esq.
Chair, Non-Public Arbitrator

Signature Date

5/9/03
Date of Service

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William D. Randolph
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Signature Date



Signature Date

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Chair, Non-Public Arbitrator

Signature Date

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