
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Merrill Lynch Pierce Fenner & Smith, Inc.

Case Number: 00-04597

Joseph Paterno and Mary Lou Paterno

Hearing Site: Fort Lauderdale, Florida

REPRESENTATION OF PARTIES

Merrill Lynch Pierce Fenner & Smith, Inc., hereinafter referred to as "Claimant": Bradford D. Kaufman, Esq., Jason M. Fedo, Esq., Neil B. Solomon, Esq. and Todd Zuckerbrod, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

Joseph Paterno and Mary Lou Paterno, hereinafter collectively referred to as "Respondent" or the "Pateros": Mark J. Bryn, Esq., Bryn & Associates, P.A., Miami, Florida. On or about February 22, 2002, Mark J. Bryn, Esq. withdrew as counsel. Thereafter, Respondent appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: October 12, 2000.

Claimant signed the Uniform Submission Agreement: October 4, 2000.

Statement of Answer filed by Respondent on or about: February 14, 2001.

Joseph Paterno signed the Uniform Submission Agreement: May 17, 2002.

Mary Lou Paterno did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of contract; 2) account stated; 3) open account; and 4) unjust enrichment. The causes of action relate to the Pateros' failure to pay a debit balance owed to Claimant relating to margin trading in their joint account. The securities at issue include investments in Proxymed, Inc.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$43,706.74; 2) interest; 3) costs; 4) attorneys' fees; and 5) such other relief the undersigned arbitrator (the "Arbitrator") deemed just and proper.

Respondent requested that the margin balance be forgiven.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 26, 2001, Claimant filed its Motion to Preclude Defenses and for Default Award. Claimant requested the Arbitrator to order that the Paternos are precluded from asserting any defense in the above-captioned arbitration proceeding and to award Claimant all relief sought in its Statement of Claim. On or about February 8, 2002, Respondent filed a response to the motion wherein Respondent requested that the motion be denied. The Arbitrator has denied the motion.

On or about May 8, 2002, Claimant filed its Motion to Compel and Motion for Default Judgment. Claimant requested the Arbitrator to order the Paternos to produce discovery and, in the event of non-production by May 10, 2002, to enter a default judgment against the Paternos. On or about May 10, 2002, Respondent filed a written response to the motion. On or about May 15, 2002, the Arbitrator denied the motions without prejudice.

At the evidentiary hearing, Joseph Paterno moved for a finding of no jurisdiction over his wife, Mary Lou Paterno. The Arbitrator denied the motion.

Mary Lou Paterno did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Arbitrator determined that Mary Lou Paterno has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Mary Lou Paterno present, in accordance with the NASD Code of Arbitration Procedure (the "Code"). However, the parties were given until June 5, 2002 to file additional papers on this issue. Claimant submitted timely argument, but the Respondent did not submit any argument.

Mary Lou Paterno did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable and shall pay to Claimant compensatory damages in the amount of \$43,706.74, plus pre-judgment interest which shall accrue, at the rate set by the Florida Comptroller of Currency each year for purposes of final judgments, from July 31, 2000 until the Award is paid in full. The Arbitrator finds Respondent liable for breach of contract, account stated and open account. The Arbitrator does not find Respondent liable for unjust enrichment.
2. Each party shall bear its own costs.

3. Claimant's request for attorneys' fees is denied.
4. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
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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, Claimant is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

On or about April 26, 2002, Respondent filed a request to postpone the evidentiary hearing scheduled for May 17, 2002. On or about April 26, 2002, Claimant filed its response in opposition to Respondent's request. On or about May 2, 2002, the Arbitrator denied Respondent's request to postpone the evidentiary hearing. Furthermore, there were no adjournment fees assessed during these proceedings.

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.

There were no injunctive relief fees incurred during these proceedings.

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: January 18, 2002 1 session	

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Two (2) Hearing sessions @ \$450.00 = \$900.00
Hearing Date: May 17, 2002 2 sessions

Total Forum Fees = \$1,350.00

The Arbitrator has assessed the total forum fees of \$1,350.00 to Respondent.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$2,400.00
Total Fees	= \$3,400.00
Less payments	= \$2,850.00
Balance Due NASD Dispute Resolution	= \$ 550.00

Respondent is liable for:

Forum Fees	= \$1,350.00
Total Fees	= \$1,350.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,350.00

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

ARBITRATION PANEL

Martin A. Feigenbaum, Esq.

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Sole Public Arbitrator

Arbitrator's Signature

/s/

Martin A. Feigenbaum, Esq.
Sole Public Arbitrator

Signature Date

July 17, 2002

Date of Service (For NASD Dispute Resolution use only)

Two (2) Hearing sessions @ \$450.00 = \$900.00
Hearing Date: May 17, 2002 2 sessions

Total Forum Fees = \$1,350.00

The Arbitrator has assessed the total forum fees of \$1,350.00 to Respondent.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	= <u>\$2,400.00</u>
Total Fees	= \$3,400.00
<u>Less payments</u>	= <u>\$2,850.00</u>
Balance Due NASD Dispute Resolution	= \$ 550.00

Respondent is liable for:

<u>Forum Fees</u>	= <u>\$1,350.00</u>
Total Fees	= \$1,350.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,350.00

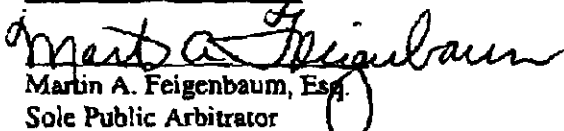
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Martin A. Feigenbaum, Esq.

Sole Public Arbitrator

Arbitrator's Signature


Martin A. Feigenbaum, Esq.
Sole Public Arbitrator

7/17/02
Signature Date

Date of Service (For NASD Dispute Resolution use only)