

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith, Inc., Claimant v. Brian Paterno, Respondent

Case Number: 00-04599

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Claimant": Neil B. Solomon, Esq., Greenberg Traurig, West Palm Beach, Florida.

Respondent Brian Paterno appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: October 13, 2000.

Claimant's Uniform Submission Agreement signed: October 4, 2000.

Statement of Answer filed by Respondent on or about: December 20, 2000.

Uniform Submission Agreement signed by Respondent: December 18, 2000.

CASE SUMMARY

Claimant alleged the following causes of action: 1) breach of contract; 2) unjust enrichment; and 3) margin debt. The causes of action relate to Respondent's investments in several securities, including Proxymed, Inc.

Unless specifically admitted in his Statement of Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested in its Statement of Claim: 1) compensatory damages in the amount of \$8,834.03; 2) interest; 3) costs; 4) attorneys' fees; and 5) such other relief that the Panel deemed just and proper.

Respondent Paterno requested that the debt in his margin account be forgiven.

OTHER ISSUES CONSIDERED AND DECIDED

As a result of the pre-hearing conference conducted on January 17, 2002, on January 18, 2002, the Arbitrator issued an Order which stated that all discovery motions shall be filed by April 2, 2002, and the responses thereto shall be filed by April 12, 2002.

On or about April 3, 2002, Claimant filed a Motion to Compel Respondent to produce documents, or have the Arbitrator enter a default award if Respondent failed to reply. Respondent did not file a response. A telephonic conference call was scheduled for April 26, 2002 to address the Motion to Compel.

As a result of the pre-hearing conference on April 26, 2002, on or about May 1, 2002, the Arbitrator issued an Order which stated that Respondent failed to appear for the telephonic conference; that Respondent did not contact NASD Dispute Resolution, Inc. to explain his failure to participate in the mutually agreed upon conference call; that Claimant had not received a single discovery document or response from the Respondent; that Respondent's conduct constituted willful and intentional disregard of arbitration procedures; and that a default award shall be entered for Claimant in the amount of \$8,834.03, plus interest and attorneys' fees.

On or about May 17, 2002, the Arbitrator issued an Order requesting Claimant to submit a brief with supporting affidavit to substantiate the legal fees incurred in this case. On or about June 3, 2002, Claimant filed an affidavit of attorneys' fees detailing the circumstances regarding the attorney's fees charged and requested fees in an amount of \$5,657.50. On June 13, 2002, the Arbitrator issued an Order that deemed Claimant's detailed analysis of the fees to be reasonable, and granted Claimant's request for reimbursement of \$5,657.50 in attorneys' fees.

AWARD

After considering the pleadings and the entire record in this matter, the undersigned Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable for breach of contract and shall pay to Claimant compensatory damages in the amount of \$8,834.03, plus interest at the legal rate in Florida from May 1, 2002 until the date of payment of the Award.
- 2) Claimant's request for attorneys' fees is granted pursuant to Florida law. Respondent shall pay to Claimant \$5,657.50.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$	500.00
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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 that gave rise to the dispute, claim, or controversy. The member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party to this dispute and was an NASD member at the time the following fees were assessed:

Member Surcharge	= \$	300.00
Total Member Fees	= \$	300.00

Adjournment Fees

No adjournment fees are assessed.

Forum Fees and Assessments

The Arbitrator 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 Arbitrator. The following fees are assessed:

Two (2) Pre-hearing conferences with the Arbitrator @ \$250.00	= \$	500.00
Pre-hearing conferences: January 17, 2002 1 session		
April 26, 2002 1 session		
Total Forum Fees	= \$	500.00

The Arbitrator assessed the total forum fees of \$500.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$	500.00
Member Fees	= \$	300.00
Total Fees	= \$	800.00
Less payments	= \$	800.00
Balance Due NASD Dispute Resolution, Inc.	= \$	0.00

Respondent is charged with the following fees and costs:

Forum Fees	= \$	500.00
Total Fees	= \$	500.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	500.00

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

Arbitrator's Signature

/s/
Robert D. Boettigheimer,
Public Arbitrator

Signature Date

July 2, 2002
Date of Service

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is charged with the following fees and costs:

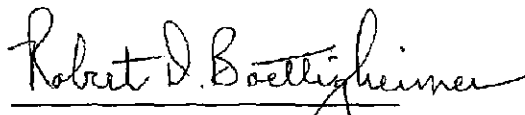
Initial Filing Fee	= \$	500.00
Member Fees	= \$	300.00
Total Fees	= \$	800.00
Less payments	= \$	800.00
Balance Due NASD Dispute Resolution, Inc.	= \$	0.00

Respondent is charged with the following fees and costs:

Forum Fees	= \$	500.00
Total Fees	= \$	500.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	500.00

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

Arbitrator's Signature


Robert D. Boettigheimer,
Public Arbitrator

6/29/02
Signature Date

Date of Service