

Stipulated Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Newton Deiter, Claimant v. Merrill Lynch, Pierce, Fenner and Smith, Inc. and Frederick J. Bothmer, Respondents

Case Number: 00-05059

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Jonathan W. Evans, Esq.
Jonathan W. Evans & Associates
Los Angeles, California

For Respondents:

Bryan I. Reyhani, Esq.
Merrill Lynch Pierce Fenner
& Smith Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: November 9, 2000

Claimant's Uniform Submission Agreement signed: Undated

Joint Statement of Answer filed by Respondents: February 22, 2001

Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.'s Uniform Submission Agreement signed: February 21, 2001

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, misrepresentation, fraud, negligence, unsuitability, violation of federal and state securities laws, omission of facts, and failure to supervise in connection with the purchase of securities in the Merrill Lynch, Pierce, Fenner and Smith, Inc.'s Strategy Power program.

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

RELIEF REQUESTED

Claimant requested \$35,000.00 in compensatory damages, interest, punitive damages, and sought reimbursement for attorney's fees and costs of arbitration

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Frederick J. Bothmer did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

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, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. is liable to and shall pay Claimant \$7,500.00 in compensatory damages.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Frederick J. Bothmer's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Frederick J. Bothmer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) All other relief 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	= \$ 175.00
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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 and Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 800.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 600.00</u>
Total Member Fees	= \$ 1,400.00

Fee Summary

1. Claimant Newton Deiter is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
<u>Less payments</u>	<u>= \$ (775.00)</u>
Refund Due Newton Deiter	= \$ 600.00

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

Member Fees	= \$ 1,400.00
<u>Less payments</u>	<u>= \$ (800.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 600.00

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

Parties' Signatures

X Newton Deiter

Newton Deiter
Claimant

May 4, 2001
Signature Date

Bryan Keith

Bryan Keith, Assistant Vice President and Manager
Merrill Lynch Pierce,
Fenner and Smith
Respondent

MAY 11, 2001
Signature Date

Frederick J. Rothner

Frederick J. Rothner
Respondent

5/8/2001
Signature Date

Concurring Arbitrator's Signature

Louis R. Eglash
Chair, Public Arbitrator

Signature Date

June 28, 2001
Date of Service

Parties' Signatures

Newton Deiter
Claimant

Signature Date

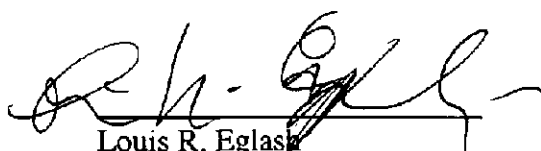
Merrill Lynch Pierce,
Fenner and Smith
Respondent

Signature Date

Frederick J. Bothmer
Respondent

Signature Date

Concurring Arbitrator's Signature



Louis R. Eglash
Chair, Public Arbitrator

5-2-01

Signature Date

June 28, 2001

Date of Service