

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Hoffer Family Trust, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Inc., Spencer W. Beard and Gerard Oliver, Respondents

Case Number: 01-01244

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Barry J. MacNaughton, Esq.
Karina B. Sterman, Esq.
Ervin, Cohen & Jessup LLP
Beverly Hills, California

For Respondents:

Todd A. Zuckerbrod, Esq.
Greenberg Traurig, P.A.
West Palm Beach, Florida

CASE INFORMATION

Statement of Claim filed: March 12, 2001

Claimant's Uniform Submission Agreement signed: March 7, 2001

Joint Statement of Answer filed by Respondents: June 8, 2001

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.'s Uniform Submission Agreement signed: June 8, 2001

Respondent Spencer W. Beard's Uniform Submission Agreement signed: May 21, 2001

Respondent Gerard Oliver's Uniform Submission Agreement signed: May 21, 2001

CASE SUMMARY

Claimant alleged breach of contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, failure to execute, negligence, and fraud, involving securities in LightPath Technologies, Inc.

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

RELIEF REQUESTED

Claimant requested \$1,490,200.00 in actual damages, unspecified punitive damages, and costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and requested reimbursement of arbitration costs.

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. Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. shall reimburse Claimant for the claim-filing fee paid to NASD Dispute Resolution in the amount of \$500.00.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief not expressly granted is denied.
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Spencer W. Beard's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Spencer W. Beard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gerard Oliver's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Gerard Oliver must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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	= \$ 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 which 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	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
Total Member Fees	= \$ 7,600.00

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 Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: July 19, 2002	1 session
1 Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: March 5, 2002	1 session
3 Hearing sessions @ \$1,200.00/session	= \$ 3,600.00
Hearings: August 13, 2002	2 sessions
August 14, 2002	1 session

Total Forum Fees	= \$ 5,250.00
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The Panel assessed the entire amount of the forum fees in the amount of \$ 5,250.00 to Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.

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 sundry other requests.

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. requested 10 copies= \$ 5.00

Fee Summary

1. Claimant, Hoffer Family Trust, is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Less payments	= \$(1,700.00)
Balance Due Claimant	= \$(1,200.00)

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

Member Fees	= \$ 7,600.00
Forum Fees	= \$ 5,250.00
<u>Administrative Costs</u>	= \$ 5.00
Total Fees	= \$12,855.00
Less payments	= \$ (7,600.00)
Balance Due NASD Dispute Resolution	= \$ 5,255.00

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 J. Anderson	-	Public Arbitrator, Presiding Chair
Mario H. Metzger	-	Public Arbitrator
Luther Delano Prater	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

David J. Anderson
Chair, Public Arbitrator

Signature Date

Mario H. Metzger
Public Arbitrator

Signature Date

Luther Delano Prater
Non-Public Arbitrator

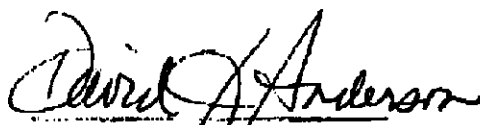
Signature Date

Date of Service

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Mario H. Metzger	-	Public Arbitrator
Luther Delano Prater	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


David J. Anderson
Chair, Public Arbitrator

8/28/2002
Signature Date

Mario H. Metzger
Public Arbitrator

Signature Date

Luther Delano Prater
Non-Public Arbitrator

Signature Date

8/28/02
Date of Service


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Chair, Public Arbitrator

Signature Date



Mario H. Metzger
Public Arbitrator

8/28/02

Signature Date

Luther Delano Prater
Non-Public Arbitrator

Signature Date

8/18/02

Date of Service

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Mario H. Metzger
Public Arbitrator

Signature Date

Luther Delano Prater

Luther Delano Prater
Non-Public Arbitrator

8/28/02

Signature Date

8/28/02

Date of Service