

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Name of the Claimant
Martin J. Mazur

Case Number: 01-01586

Name of the Respondents
Merrill Lynch Pierce Fenner & Smith, Inc.,
Brian Sepe, Robert E. Graham, Thomas Lydon,
and Joseph P. Gannotti

Hearing Site: Chicago, Illinois

REPRESENTATION OF PARTIES

Claimant Martin J. Mazur ("Mazur") was represented by Keven S. Besetzny, Esq. of the firm Novoselsky Law Offices located in Chicago, Illinois.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), Brian Sepe ("Sepe"), Robert E. Graham ("Graham"), Thomas Lydon ("Lydon"), and Joseph P. Gannotti ("Gannotti") hereinafter collectively referred to as "Respondents": Michael Fortunato, Esq. of the firm Rubin & Associates, PC located in Paoli, Pennsylvania.

CASE INFORMATION

Uniform Submission Agreements

Claimant Mazur signed the Uniform Submission Agreement: March 30, 2001.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 01, 2001.

Respondent Sepe signed the Uniform Submission Agreement: June 06, 2001.

Respondent Graham signed the Uniform Submission Agreement: April 08, 2001.

Respondent Lydon signed the Uniform Submission Agreement: June 11, 2001.

Respondent Gannotti signed the Uniform Submission Agreement: June 04, 2001.

Pleadings

Statement of Claim filed on or about: March 30, 2001.

Joint Statement of Answer filed by Respondents on or about: July 05, 2001.

Amended Statement of Claim filed on or about: May 31, 2002.

Joint Statement of Answer to Amended Statement of Claim filed by Respondents on or about: June 14, 2002.

Motions

Respondents' Motion to Dismiss Statement of Claim filed on or about: April 12, 2002.

Claimant's Response to Respondents' Motion to Dismiss Statement of Claim filed on or about: April 26, 2002.

Motion for Leave to File Amended Statement of Claim filed on or about: April 26, 2002.
Respondents' Opposition to Claimant's Motion for Leave to File Amended Statement of Claim
filed on or about: May 10, 2002.

Respondents' Motion for Summary Judgment filed on or about: July 01, 2002.
Claimant's Response to Respondents' Motion for Summary Judgment filed on or about:
July 12, 2002.

CASE SUMMARY

Claimant Mazur asserted the following causes of action: Interference with business relations and intentional infliction of emotional distress.

Unless specifically admitted in their Answer and Answer to Amended Statement of Claim, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

- Claimant is barred in whole or in part because any and all losses sustained were due to his own failures and omissions, his own conduct or negligence, or his own failure to mitigate.
- Claimant fails to set forth any facts upon which relief can be granted.
- Respondents acted in good faith and for proper business reasons.
- The claims are barred in whole or in part because Claimant has sustained no legally recognized injury arising from the conduct alleged.
- Claimant is precluded from any recovery because the damages he seeks are necessarily speculative and not recoverable as a matter of law.
- Claimant fails to state a claim for punitive damages.
- The claims are barred in whole or in part by the applicable statutes of limitation.
- Claimant's claims are barred in whole or in part by the Statute of Frauds.
- Claimant's claims are barred in whole or in part by the doctrine of laches.
- The claims are barred in whole or in part by the doctrines of waiver and estoppel.
- Claimant's claims are barred in whole or in part by the doctrine of unclean hands.
- Mazur failed to mitigate.

RELIEF REQUESTED

Claimant Mazur requested:

Compensatory Damages

Punitive Damages

Attorneys' Fees

Other Costs

Other Monetary/Non-Monetary Relief if any:

\$5 million

\$15 million

determined at hearing

determined at hearing

payment of all earned and
accrued Merrill Lynch
benefits; that, retroactive to
March 31, 2000 be put back
onto and made active on all

of Merrill Lynch's health insurance plans, and all further relief as deemed appropriated by the Panel.

Respondents requested:

Other Costs

Other Monetary/Non-Monetary Relief if any:

unspecified

dismissal of claims and any relief the Panel deems reasonable and proper under the circumstances presented

OTHER ISSUES CONSIDERED AND DECIDED

On May 23, 2002, the panel granted Claimant's Motion for Leave to Amend Statement of Claim.

On June 02, 2002, the panel denied Respondents' Motion to Dismiss.

On July 19, 2002, the panel denied Respondents' Motion for Summary Judgment.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Based upon the extensive record in this matter the panel finds in favor of each of the Respondents. Claimant Martin J. Mazur failed to prove that any of the five Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Brian Sepe, Robert E. Graham, Thomas Lydon, and Joseph P. Gannotti, were guilty of the type of conduct that either (1) tortiously interfered with Claimant's business relations or (2) intentionally inflicted emotional distress on the Claimant. Moreover, the two-year Illinois Statue of Limitations applicable to claims for torts or injuries to the person would bar Claimant's claims. Consequently, any and all claims asserted by Claimant Martin J. Mazur against Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Brian Sepe, Robert E. Graham, Thomas Lydon, and Joseph P. Gannotti are denied and dismissed.
2. Except as specified herein, parties shall each bear their own costs, including attorney's fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. is a party.

Member surcharge	= \$3,600.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total	= \$9,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

Claimant requested postponement of the June 03-07, 2002 hearing dates	= \$1,200.00
Claimant requested postponement of the July 23-29, 2002 hearing dates	= \$1,500.00
Claimant requested postponement of the October 16-18, 2002 hearing dates	= \$1,500.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator at \$450.00	= \$ 450.00
Pre-hearing conference: June 21, 2002	1 session
Five (5) Pre-hearing sessions with Panel at \$1,200.00	= \$ 6,000.00
Pre-hearing conferences: February 20, 2002	1 session
May 31, 2002	1 session
July 15, 2002	1 session
September 17, 2002	1 session
October 10, 2002	1 session

Twenty-one (21) Hearing sessions at \$1,200.00 = \$25,200.00

Hearing Dates:	November 12, 2002	1 session
	November 13, 2002	2 sessions
	November 14, 2002	2 sessions
	November 15, 2002	2 sessions
	December 12, 2002	2 sessions
	December 13, 2002	2 sessions
	December 16, 2002	2 sessions
	December 17, 2002	2 sessions
	December 18, 2002	2 sessions
	December 19, 2002	2 sessions
	December 20, 2002	2 sessions

Total Forum Fees = \$31,650.00

1. The Panel has assessed \$15,825.00 of the forum fees to Martin J. Mazur.
2. The Panel has assessed \$15,825.00 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., Brian Sepe, Robert E. Graham, Thomas Lydon, and Joseph P. Gannotti

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.

1. Merrill Lynch Pierce Fenner & Smith, Inc., requested security = \$ 250.00
2. Merrill Lynch Pierce Fenner & Smith, Inc., requested copies = \$ 6.50

SEE SUMMARY

1. Claimant Martin J. Mazur is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fees	= \$ 4,200.00
<u>Forum Fees</u>	<u>= \$15,825.00</u>
Total Fees	= \$20,625.00
<u>Less payments</u>	<u>= \$ 5,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$15,625.00

2. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 9,200.00
<u>Administrative Fees</u>	<u>= \$ 256.50</u>
Total Fees	= \$ 9,456.50
<u>Less payments</u>	<u>= \$ 9,456.50</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents Merrill Lynch Pierce Fenner & Smith, Inc. Brian Sepe, Robert E. Graham, Thomas Lydon, and Joseph P. Gannotti are jointly and severally liable for:

Forum Fees	= \$15,825.00
<u>Less payments</u>	= \$ 5,743.50
Balance Due NASD Dispute Resolution, Inc.	= \$10,081.50

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

ARBITRATION PANEL

William Goldsberry	-	Public Arbitrator, Presiding Chairperson
Raymond P. Buschmann, Esq.	-	Public Arbitrator
Derek McSherry, RFC, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ William D. Goldsberry

01/29/03

William D. Goldsberry
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ Raymond P. Buschmann

01/30/03

Raymond P. Buschmann, Esq.
Public Arbitrator

Signature Date

/s/ Derek McSherry

01/27/03

Derek McSherry, RFC, CFP
Non-Public Arbitrator

Signature Date

01/31/03

Date of Service (For NASD Dispute Resolution office use only)

3. Respondents Merrill Lynch Pierce Fenner & Smith, Inc. Brian Sepe, Robert E. Graham, Thomas Lydon, and Joseph P. Gannotti are jointly and severally liable for:

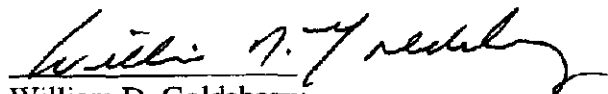
Forum Fees	= \$15,825.00
<u>Less payments</u>	<u>= \$ 5,743.50</u>
Balance Due NASD Dispute Resolution, Inc.	= \$10,081.50

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

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William Goldsberry	-	Public Arbitrator, Presiding Chairperson
Raymond P. Buschmann, Esq.	-	Public Arbitrator
Derek McSherry, RFC, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



William D. Goldsberry
Public Arbitrator, Presiding Chairperson

1/28/03
Signature Date

Raymond P. Buschmann, Esq.
Public Arbitrator

Signature Date

Derek McSherry, RFC, CFP
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Date 1-30-03 # of pages 1

3. Respondents Merrill Lynch Pie
 Thomas Lydon, and Joseph P. G
 Forum Fees
Less payments
 Balance Due NASD Dispute Res

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

ARBITRATION PANEL

William Goldsberry
 Raymond P. Buschmann, Esq.
 Derek McSherry, RFC, CFP

Public Arbitrator, Presiding Chairperson
 Public Arbitrator
 Non-Public Arbitrator

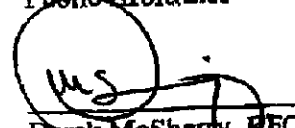
Concurring Arbitrators' Signatures

William D. Goldsberry
 Public Arbitrator, Presiding Chairperson

Signature Date


 Raymond P. Buschmann, Esq.
 Public Arbitrator

1/30/03
 Signature Date


 Derek McSherry, RFC, CFP
 Non-Public Arbitrator

01/27/03
 Signature Date

Date of Service (For NASD Dispute Resolution office use only)

TOTAL P.08

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