

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Scott S. Singer, (Claimant) vs. Scott Franklin, Salomon Smith Barney, Inc. and Merrill Lynch  
Pierce Fenner & Smith, Inc. (Respondents)

Case Number: 01-02064

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Scott J. Singer ("Claimant"): Stephen H. Weiner, Esq., Law Offices of Stephen H. Weiner, New York, NY.

Respondents Scott Franklin ("Franklin") and Salomon Smith Barney, Inc.  
("SSB"): Etta M. Gumbs, Esq., First Vice President and Associate General Counsel,  
Salomon Smith Barney, Inc., New York, NY.

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"): I. Scott Bieler,  
Esq. and Ellen Sheridan-Cona, Esq., Office of General Counsel, Merrill Lynch Pierce  
Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 23, 2001.

Claimant signed the Uniform Submission Agreement: April 17, 2001.

Response to Respondents SSB and Franklin's Motion to Dismiss filed by Claimant on or  
about: April 25, 2002.

Pre-hearing Memorandum of Law filed by Claimant on or about: May 20, 2002.

Statement of Answer filed by Respondents Franklin and SSB on or about: June 12, 2001

Respondent Franklin signed the Uniform Submission Agreement: June 20, 2001.

Respondent SSB signed the Uniform Submission Agreement: June 18, 2001.

Motion to Dismiss filed by Respondents Franklin and SSB on or about: April 5, 2002.

Statement of Answer and Counterclaim filed by Respondent Merrill Lynch on or about: June  
26, 2001.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 26, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: intentional misrepresentation and coercion  
by Respondent Franklin; failure to make trades as expressly instructed by Claimant and  
agreed upon by Respondent Franklin; gross negligence of Respondents Franklin, SSB and  
Merrill Lynch for failure to notify Claimant when the transfer of accounts did not occur and  
remained in the possession of Respondent Merrill; failure of Respondent Franklin to sell

shares in the company Verticalnet, Inc.; failure of Respondent Franklin to notify authorities at Merrill Lynch of the situation so that action could have been taken; breach of fiduciary duty; gross negligence of Respondent Franklin and Respondent Merrill Lynch; unauthorized liquidation by Respondent Merrill Lynch of Claimant's accounts; unethical and illegal practice by Respondent Merrill Lynch of providing unauthorized access of information in Claimant's accounts to Respondent Franklin; and respondeat superior.

Unless specifically admitted in its Answer, Respondents Franklin and SSB denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Claimant's damage claim is inaccurate and not grounded in law or fact; and Claimant's claim should be dismissed because SSB never maintained an account on behalf of Claimant.

Unless specifically admitted in its Answer, Respondent Merrill Lynch denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a cause of action upon which relief may be granted; estoppel; waiver and ratification; Respondent acted in a commercially reasonable manner, consistent with the obligations and responsibilities toward Claimant; assumption of the risk; breach of contract; Claimant realized no damages resulting from Respondent's conduct; all transaction upon which Claimant bases his claims were conducted in accordance with all applicable SEC rules and regulations; contributory or comparative negligence; and failure to mitigate damages.

In its Counterclaim, Respondent Merrill Lynch asserted the following causes of action: repayment of unsatisfied margin debit.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$48,454.97 and punitive damages in the amount of \$10,000.00.

Respondents Franklin and SSB requested dismissal of Claimant's claims in their entirety; and expungement of this matter from Respondent Franklin's CRD record.

Respondent Merrill Lynch requested dismissal of Claimant's claims in their entirety; that all costs, fees and expenses of these proceedings be assessed against Claimant. In its counterclaim, Respondent Merrill Lynch requested compensatory damages in the amount of \$3,258.02, plus such other relief as the Panel deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have 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 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. Respondent Merrill Lynch be and hereby is liable for and shall pay to Claimant the sum of \$20,991.27 plus interest at the rate of 7% per annum accruing from April 18, 2000 until the date of payment.
2. Respondent Merrill Lynch's counterclaim is denied in its entirety.
3. The panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Scott Franklin's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Franklin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. All other requests for relief are 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	= \$ 225.00
Counter claim filing fee	= \$ 400.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, SSB and Merrill Lynch are parties.

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,500.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

Four (4) Pre-hearing sessions with Panel x \$750.00 = \$ 3,000.00  
Pre-hearing conferences:    January 15, 2002    1 session  
   January 28, 2002    1 session  
   January 30, 2002    1 session  
   April 23, 2002    1 session  
  
Two (2) Hearing sessions x \$750.00 = \$ 1,500.00  
Hearing Date:                      June 20, 2002                      2 sessions  
Total Forum Fees = \$ 4,500.00

1. The Panel has assessed \$1,125.00 of the forum fees against Claimant Singer.
2. The Panel has assessed \$1,125.00 of the forum fees against Respondent Franklin.
3. The Panel has assessed \$1,125.00 of the forum fees against Respondent SSB.
4. The Panel has assessed \$1,125.00 of the forum fees against Respondent Merrill Lynch.

**Fee Summary**

1. Claimant be and hereby is solely liable for:  
    Initial Filing Fee = \$ 225.00  
    Forum Fees = \$ 1,125.00  
    Total Fees = \$ 1,350.00  
    Less payments = \$ 975.00  
    Balance Due NASD Dispute Resolution = \$ 375.00
2. Respondent SSB be and hereby is solely liable for:  
    Member Fees = \$ 3,100.00  
    Forum Fees = \$ 1,125.00  
    Total Fees = \$ 4,225.00  
    Less payments = \$ 3,100.00  
    Balance Due NASD Dispute Resolution = \$ 1,125.00
3. Respondent Franklin be and hereby is solely liable for:  
    Forum Fees = \$ 1,125.00  
    Total Fees = \$ 1,125.00  
    Less payments = \$ 0.00  
    Balance Due NASD Dispute Resolution, Inc. = \$ 1,125.00
4. Respondent Merrill Lynch be and hereby is solely liable for:  
    Counterclaim Filing Fee = \$ 400.00

Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	= \$ 1,125.00
Total Fees	= \$ 4,625.00
<u>Less payments</u>	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,525.00

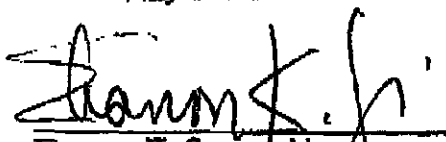
All balances are due and payable to NASD Dispute Resolution.

**ARBITRATION PANEL**

Eleanore K. Szymanski	-	Public Arbitrator, Presiding Chair
Bernard A. Friedman, Esq.	-	Public Arbitrator
David Denison	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Eleanore K. Szymanski  
Public Arbitrator, Presiding Chair

7-26-02  
Signature Date

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Bernard A. Friedman, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David Denison  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

August 1, 2002  
\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Eleanore K. Szymanski  
Public Arbitrator, Presiding Chair

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Signature Date

  
Bernard A. Friedman, Esq.  
Public Arbitrator

8/6/02  
Signature Date

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David Denison  
Non-Public Arbitrator

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Signature Date

August 1, 2002  
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