

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Treit, Ltd. and W. James White, (Claimants) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.
and William Durham, (Respondents)

Case Number: 01-02232

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Treit, Ltd. ("Treit") and W. James White ("White"), hereinafter collectively referred to as "Claimants": Edward G. Bailey, Esq. and Jeff Sherman, Esq., Bailey & Sherman, P.C., Douglaston, NY.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"): Lawrence E. Fenster, Esq., Ross & Hardies, New York, NY.

Respondent, William Durham ("Durham"): Julian W. Friedman, Esq., Stillman & Friedman, P.C., New York, NY.

CASE INFORMATION

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

Treit signed the Uniform Submission Agreement: April 30, 2001.

White signed the Uniform Submission Agreement: April 30, 2001.

Joint Statement of Answer filed by Merrill and Durham on or about: December 3, 2001.

Joint Amended Statement of Answer filed by Merrill and Durham on or about: December 14, 2001.

Merrill signed the Uniform Submission Agreement: March 8, 2002.

Durham signed the Uniform Submission Agreement: March 8, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; violation of the Securities Act of 1933; violation of the Securities Exchange Act of 1934; violation of securities rules; common law fraud; gross negligence; and negligent supervision. Claimants' claim involved the stock of North American DataCom, Inc.

Unless specifically admitted in their Answer and Amended Answer, Merrill and Durham denied the allegations made in the Statement of Claim and asserted the following defenses: at the time he opened his account with Merrill, White misrepresented to Durham and Merrill material facts regarding his personal background, his investment objectives, and his risk tolerance; Claimants are estopped by their own conduct from recovering the damages sought in this proceeding; Claimants are barred by their own unclean hands from recovering the damages sought in this proceeding; and to the extent the allegations in the Statement of Claim regarding Durham's conduct with respect to Claimants prior to his resignation from Merrill are proven to be true, such conduct was not known to Merrill and was outside the scope of Durham's employment.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$63,951,368.00, plus punitive damages, pre-judgment interest, costs, attorneys' fees, and such other relief as the Panel deems necessary and proper.

Merrill and Durham requested an Award dismissing the Statement of Claim in its entirety.

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. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution 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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge = \$ 3,600.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 5,000.00

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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: June 28, 2002 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: March 13, 2002 1 session

Eleven (11) Hearing sessions x \$1,200.00 = \$13,200.00

Hearing Dates: July 23, 2002 2 sessions
July 24, 2002 2 sessions
July 25, 2002 2 sessions
July 30, 2002 2 sessions
July 31, 2002 2 sessions
August 1, 2002 1 session

Total Forum Fees = \$14,850.00

1. The Panel has assessed \$4,950.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$4,950.00 of the forum fees against Merrill.
3. The Panel has assessed \$4,950.00 of the forum fees against Durham.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 4,950.00
Total Fees	= \$ 5,550.00
<u>Less payments</u>	= \$ 1,850.00
Balance Due NASD Dispute Resolution	= \$ 3,700.00

2. Merrill be and hereby is solely liable for:

Member Fees	= \$ 9,200.00
<u>Forum Fees</u>	= \$ 4,950.00
Total Fees	= \$14,150.00
<u>Less payments</u>	= \$ 9,200.00
Balance Due NASD Dispute Resolution	= \$ 4,950.00

3. Durham be and hereby is solely liable for:

<u>Forum Fees</u>	= \$ 4,950.00
Total Fees	= \$ 4,950.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,950.00


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

ARBITRATION PANEL

Joseph F. Wagner, Esq.	-	Public Arbitrator, Presiding Chair
Daniel A. Pinkus, Esq.	-	Public Arbitrator
Lionel C. Bandler	-	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.



Joseph F. Wagner, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Daniel A. Pinkus, Esq.
Public Arbitrator

Signature Date

Lionel C. Bandler
Non-Public Arbitrator

Signature Date

August 23, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Joseph F. Wagner, Esq.
Public Arbitrator, Presiding Chair

Daniel A. Pinkus, Esq.
Public Arbitrator

Lionel C. Bandler
Non-Public Arbitrator

Signature Date

8/19/02

Signature Date

Signature Date

August 23, 2002
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

August 23, 2002

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