

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Janette M. Corby, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Donald C. Korkow,
and Richard M. Kenton, Respondents

Case Number: #01-02624

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Jeffrey A. Feldman, Esq.
Law Offices of Jeffrey A. Feldman
San Francisco, California

For Respondents:

W. Reece Bader, Esq.
Susan L. Masetti, Esq.
Orrick, Herrington & Sutcliffe
Menlo Park, California

CASE INFORMATION

Statement of Claim filed: May 17, 2001

Claimant's Uniform Submission Agreement signed: April 30, 2001

Joint Statement of Answer filed by Respondents: September 7, 2001

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: August 24, 2001

Respondent Donald C. Korkow's Uniform Submission Agreement signed: August 17, 2001

Respondent Richard M. Kenton's Uniform Submission Agreement signed: August 17, 2001

CASE SUMMARY

Claimant alleged breach of fiduciary duty, negligent supervision, breach of third-party beneficiary contract, fraud, violation of Corporation Code §§ 25,400, et seq., and negligence. The claim involved Claimant's exercise and hold transaction involving Allegiance Telecom ("Allegiance") employee stock options.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,223,042.38, unspecified punitive damages, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

STIPULATED FINDINGS OF FACT

The Panel heard testimony from four witnesses, including both Respondent brokers and the Merrill Lynch Omaha office administrative manager, during the first session of the arbitration held over the course of four days in San Francisco, California, on November 11 through 14, 2002. A second week of hearings was scheduled in San Francisco, California, for April 7 through 11, 2003. On April 7, 2003, the parties advised the Panel that they had entered into a Confidential Settlement Agreement, which provides for no contribution on the part of individual brokers Messrs. Korkow and Kenton. The parties also requested that the Panel hear and consider additional testimony from claimant for purposes of ruling on a joint request to expunge the Central Registration Depository ("CRD") records of Messrs. Korkow and Kenton. Thereafter, Claimant testified regarding certain matters relevant to the request for expungement. The parties also agreed to submit Stipulated Findings of Fact in this matter.

After having considered the testimony provided by the witnesses, including Claimant, the individual Respondent brokers and the administrative manager, the numerous exhibits introduced into evidence, the briefs filed in support of the parties' positions, the arguments of counsel, and the fact that the settlement provides for no monetary contribution by the individual broker Respondents, the Panel makes the following findings of fact on the issues submitted for determination:

1. Merrill Lynch, through its Omaha, Nebraska office, contracted with Allegiance to provide services facilitating the exercise of Allegiance employee stock options by employees and former employees.
2. Respondents Donald Korkow and Richard Kenton were the brokers responsible for executing those services at Merrill Lynch's Omaha office.

3. A significant number of individuals took advantage of this service and exercised their options through Merrill Lynch.
4. Some of the individuals engaged in a "cashless" exercise, in which options were exercised, a portion of the stock was sold and the proceeds sent to Allegiance at its direction to pay for the exercise price and estimated taxes, and the remaining stock sold or delivered out.
5. Some of the individuals, including the Claimant, exercised the options and held the stock in a margin account in which the margin debit represented the exercise price and estimated taxes sent to Allegiance at its direction.
6. Claimant exercised 22,500 options on April 4, 2000, valued at \$1,347,187.50. Merrill Lynch debited her account a total of \$561,171.26, reflecting the exercise price and estimated taxes sent to Allegiance at its direction. Immediately after the exercise the market value of the Claimant's account was \$1,591,875.00, and the net equity was \$1,030,700.00.
7. Respondent Kenton opened Claimant's account, obtained relevant information from Claimant and, with the assistance of Respondent Korkow, arranged with Allegiance and Claimant for the exercise and hold transaction.
8. Respondent Kenton remained Claimant's broker of record until the Fall of 2000, although, with one exception, all of the communications between Respondent Kenton and Claimant occurred prior to late July, 2000.
9. On July 21, 2000, Respondent Kenton sent an e-mail to Claimant in which he recommended that Claimant's account at Merrill Lynch be diversified. At that time, Allegiance was trading above its price at the time of Claimant's exercise.
10. Claimant's account continued to hold the Allegiance stock on margin until the account was liquidated in the end of November, 2000.
11. Beginning with initial research coverage in early 2000, Merrill Lynch research recommendation as to Allegiance remained, inter alia, a "Buy" and/or "Long Term Buy," up to and including the time Claimant's account was liquidated.
12. Merrill Lynch's research opinion was communicated to Claimant.
13. Respondent Korkow had some communications with Claimant in April and July, 2000, and became her broker of record in the Fall of 2000.

14. At the time Respondent Korkow became broker of record, Allegiance stock had declined in value such that Claimant began to receive margin calls.
15. During the year 2000, Claimant had accounts at another brokerage firm, two of which were managed by an independent investment advisor.
16. On several occasions, claimant's investment advisor recommended Claimant diversify one of the managed accounts because he believed it was overexposed as a result of concentrated holdings in two telecommunications stocks. Claimant did not reduce the positions in that account.
17. Prior to the exercise of the Allegiance options in April, 2000, Claimant discussed those options with her investment advisor.
18. In May, 2000, after the exercise and hold strategy at Merrill Lynch was implemented, Claimant's investment advisor told Claimant the strategy was risky unless the value of the Allegiance stock increased more than the margin interest being paid, and that he believed additional taxes would be due above those sent by Merrill Lynch to Allegiance.
19. On September 11, 2000, (by phone), October 6, 2000, (a meeting), and November 16, 2000, (by phone), Claimant and her investment advisor discussed her Merrill Lynch account.
20. During this period, as a result of the further decline in value of Allegiance, Claimant had deposited additional monies and securities into her Merrill Lynch account to meet margin calls.
21. On one of these occasions in the Fall of 2000, the investment advisor recommended Claimant sell the Allegiance stock and diversify the proceeds.
22. On another occasion in the Fall of 2000, the investment advisor recommended Claimant contact a tax advisor to determine the correct tax liability from the exercise.
23. In late November, 2000, Claimant sold all of her Allegiance stock in the Merrill Lynch account, leaving a debit balance of approximately \$65,000.00, which Claimant subsequently paid.

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, and the parties Stipulated Findings of Fact, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim as to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Donald C. Korkow and Richard M. Kenton is dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Donald C. Korkow and Richard M. Kenton registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Donald C. Korkow and Richard M. Kenton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEEES

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 that 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 or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with a single Arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: September 9, 2002	1 session
October 17, 2002	1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: July 25, 2002	1 session
April 1, 2003	1 session

Nine (9) Hearing sessions @ \$1,200.00/session	= \$10,800.00
Hearings: November 11, 2002	2 sessions
November 12, 2002	2 sessions
November 13, 2002	2 sessions
November 14, 2002	2 sessions
April 7, 2003	1 session

Total Forum Fees	= \$14,100.00
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By party stipulation, the forum fees of \$14,100.00 are assessed 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.

Claimant requested copies of hearing tapes: = \$ 105.00

Fee Summary

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

Initial Filing Fee	= \$ 500.00
<u>Administrative Costs</u>	<u>= \$ 105.00</u>
Total Fees	= \$ 605.00
<u>Less payments</u>	<u>= \$(1,805.00)</u>
Refud Due from NASD Dispute Resolution	= \$(1,200.00)

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

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	<u>= \$14,100.00</u>
Total Fees	= \$21,700.00
<u>Less payments</u>	<u>= \$(7,600.00)</u>
Balance Due NASD Dispute Resolution	= \$14,100.00

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.

Parties' Signatures



Jeffrey A. Feldman, Esq.
For Claimant Jaquette M. Curby

5/17/03

Signature Date

W. Reece Bader, Esq.
For Respondents Merrill Lynch, Pierce, Fenner &
Smith, Inc., Donald C. Korkow and Richard M. Kenton

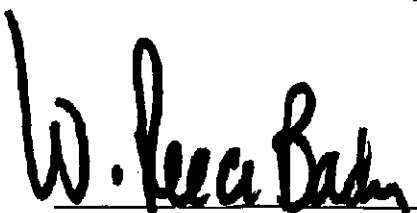
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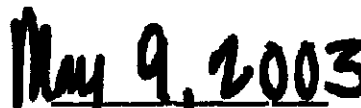
Parties' Signatures

Jeffrey A. Feldman, Esq.
For Claimant Janette M. Corby

Signature Date



W. Reece Bader, Esq.
For Respondents Merrill Lynch, Pierce, Fenner &
Smith, Inc., Donald C. Korkow and Richard M. Kenton



Signature Date

ARBITRATION PANEL

George King, Esq.	-	Public Arbitrator, Presiding Chair
James N. D'Orso	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



George King, Esq.
Chair, Public Arbitrator

5/27/03
Signature Date

James N. D'Orso
Public Arbitrator

Signature Date

Richard B. Bullock
Non-Public Arbitrator

Signature Date

5/27/03

Date of Service

ARBITRATION PANEL

George King, Esq.	-	Public Arbitrator, Presiding Chair
James N. D'Orso	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

George King, Esq.
Chair, Public Arbitrator

Signature Date



James N. D'Orso
Public Arbitrator

5/21/03

Signature Date

Richard B. Bullock
Non-Public Arbitrator

Signature Date

5/27/03

Date of Service

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Public Arbitrator

Signature Date



Richard B. Bullock
Non-Public Arbitrator

5/21/03

Signature Date

5/27/03

Date of Service