

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James L. Murphy, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Inc., Respondent

Case Number: 01-02625

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Timothy L. Hamilton, Esq.
Hamilton, Hamilton & Mah
Cameron Park, California

For Respondent:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud
Sacramento, California

CASE INFORMATION

Statement of Claim filed on or about: May 7, 2001

Claimant's Arbitration Brief filed on or about: October 11, 2002

Claimant's Uniform Submission Agreement signed: May 4, 2001

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.'s ("Merrill Lynch") Statement of Answer filed on or about: October 9, 2001

Respondent's Arbitration Brief filed on or about: October 11, 2002

Respondent Merrill Lynch's Uniform Submission Agreement signed: October 9, 2001

CASE SUMMARY

Claimant alleged that the above-referenced dispute arises out of breaches of fiduciary duties by a representative of Respondent Merrill Lynch with respect to investments in Timbaktu Gold stock. Claimant further alleged that he is seeking damages because of Respondent's failure to properly administer his account and misrepresentations.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$312,000.00 plus interest, costs, attorney's fees and punitive damages.

Respondent requested that Claimant's Statement of Claim be dismissed in its entirety, together with such other and further relief as is deemed just and proper.

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) All claims by Claimant, including the claim for punitive damages, are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Merrill Lynch, is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$2,500.00
Total Member Fees	= \$4,600.00

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 the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: June 20, 2002	1 session
(2) Hearing sessions @ \$1,125.00/session	= \$2,250.00
Hearing: October 21, 2002	2 sessions

Total Forum Fees	= \$3,375.00
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The Panel assessed \$1,687.50 of the forum fees to Claimant.

The Panel assessed \$1,687.50 of the forum fees to Respondent.

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 other requests.

The parties did not incur administrative costs.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,687.50
<u>Administrative Costs</u>	<u>= \$ 0.00</u>
Total Fees	= \$ 1,987.50
<u>Less Payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD-DR	= \$ 562.50

2. Respondent, Merrill Lynch, is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 1,687.50
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 6,287.50
<u>Less Payments</u>	= \$ (4,600.00)
Balance Due NASD-DR	= \$ 1,687.50

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


ARBITRATION PANEL

Herbert Liberman	-	Public Arbitrator, Presiding Chair
Beverly A. Fleming	-	Public Arbitrator
Alvin L. Fishman, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Herbert Liberman
Chair, Public Arbitrator

Signature Date



Beverly A. Fleming
Public Arbitrator

11-6-02

Signature Date

Alvin L. Fishman, Esq.
Non-Public Arbitrator

Signature Date

11/14/02

Date of Service

2. Respondent, Merrill Lynch, is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 1,687.50
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 6,287.50
<u>Less Payments</u>	= \$ (4,600.00)
Balance Due NASD-DR	= \$ 1,687.50

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Beverly A. Fleming	-	Public Arbitrator
Alvin L. Fishman, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Herbert Liberman
Chair, Public Arbitrator



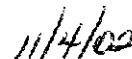
Signature Date

Beverly A. Fleming
Public Arbitrator

Signature Date

Alvin L. Fishman, Esq.
Non-Public Arbitrator

Signature Date



Date of Service

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Member Fees	= \$ 4,600.00
Forum Fees	= \$ 1,687.50
Administrative Costs	= \$ 0.00
Total Fees	= \$ 6,287.50
Less Payments	= \$ (4,600.00)
Balance Due NASD-DR	= \$ 1,687.50

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Alvin L. Fishman, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Herbert Liberman
Chair, Public Arbitrator

Signature Date

Beverly A. Fleming
Public Arbitrator

Signature Date



Alvin L. Fishman, Esq.
Non-Public Arbitrator

11-06-02
Signature Date

11/4/02
Date of Service