

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mary Rose Sigmen, Claimant v. Serafin P. Aquino and Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondents

Case Number: 02-04477

Hearing Site: Seattle, Washington

Nature of Dispute: Customer v. Associated Person and Member Firm

REPRESENTATION OF PARTIES

For Claimant:

F. Mike Shaffer, Esq.
Gordon, Thomas, Honeywell, Malanca,
Peterson, and Daheim LLP
Tacoma, Washington

For Respondents:

Eric D. Lansverk, Esq.
Hillis Clark Martin & Peterson, P.S.
Seattle, Washington

CASE INFORMATION

Statement of Claim received: July 30, 2002

Claimant's Uniform Submission Agreement signed: July 16, 2002

Joint Statement of Answer filed by Respondents: October 21, 2002

Respondent Serafin P. Aquino's Uniform Submission Agreement signed: October 24, 2002

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: October 5, 2002

CASE SUMMARY

Claimant's Statement of Claim alleged negligence, misrepresentation, breach of fiduciary duty, failure to supervise, unsuitability, and failure to follow customer instructions in the purchase and sale of the common stock of America Online and Nortel.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$321,000.00, unspecified punitive damages, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and an award of costs. Respondents also requested expungement of all references to the above-captioned arbitration from Respondent Serafin P. Aquino's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On December 3, 2003, Respondents moved the Panel to allow for review of Claimant's telephone notes in numerous unproduced spiral notebooks. After due deliberation, the Panel granted the motion for review.

On December 3, 2003, at the close of Claimant's presentation of her case, Respondents moved the Panel to dismiss Claimant's claims. After due deliberation, the Panel denied the motion.

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) Respondents Serafin P. Aquino and Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly and severally liable to and shall pay Claimant the sum of \$15,500.00 in compensatory damages on the trading of Nortel common stock.
- 2) Respondents Serafin P. Aquino and Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly and severally liable to and shall pay Claimant the sum of \$300.00 as reimbursement of the filing fee in this matter.
- 3) Claimant's request for punitive damages is denied.
- 4) Except as discussed in paragraph (2), the parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

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	= \$ 300.00
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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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: March 4, 2003 1 session	
Four (4) Hearing sessions with the Panel @ \$ 1,125.00/session	= \$ 4,500.00
Hearings: December 3, 2003 2 sessions	
December 4, 2003 2 sessions	
Total Forum Fees	= \$ 5,625.00

The Panel assessed \$5,625.00 of the forum fees jointly and severally to Respondents Serafin P. Aquino and Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$ (1,425.00)</u>
Refund Due Claimant	= \$ (1,125.00)

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

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$ (5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Serafin P. Aquino and Merrill Lynch, Pierce, Fenner & Smith, Inc. are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,625.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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.

ARBITRATION PANEL

Thomas R. Drelling, Esq.

Public Arbitrator, Presiding Chair

Linda M. Deola, Esq.

Public Arbitrator


Christopher B. Wells

Non-Public Arbitrator

Concurring Arbitrators' Signatures

THOMAS R. DREILING, ESQ.
Chair, Public Arbitrator

Signature Date



LINDA M. DEOLA, ESQ.
Public Arbitrator

12.10.03

Signature Date

CHRISTOPHER B. WELLS
Non-Public Arbitrator

Signature Date

12/11/03

Date of Service

ARBITRATION PANEL

<i>Thomas R. Dreiling, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Linda M. Deola, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Christopher B. Wells</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

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Chair, Public Arbitrator

Signature Date

LINDA M. DEOLA, ESQ.
Public Arbitrator

Signature Date


CHRISTOPHER B. WELLS
Non-Public Arbitrator

12-11-03
Signature Date

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Date of Service

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<i>Christopher B. Wells</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

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THOMAS R. DREILING, ESQ.
Chair, Public Arbitrator

12/2/03
Signature Date

LINDA M. DEOLA, ESQ.
Public Arbitrator

Signature Date

CHRISTOPHER B. WELLS
Non-Public Arbitrator

Signature Date

Date of Service