

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Michael T. Hill

Case Number: 02-04612

Name of the Respondent
Merrill Lynch, Pierce, Fenner &
Smith Incorporated

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Michael T. Hill, hereinafter referred to as "Claimant": Steven J. Gard, Esq., Gard Smiley Bishop & Dovin LLP, Atlanta, Georgia.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill"), hereinafter referred to as "Respondent": S. Lawrence Polk, Esq. and Daniel Boland, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: August 5, 2002.

Claimant signed the Uniform Submission Agreement: August 1, 2002.

Statement of Answer filed by Respondent on or about: November 7, 2002.

Amendment to Answer of Respondent filed on or about: December 19, 2002.

Respondent signed the Uniform Submission Agreement: November 12, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: fraudulent inducement; breach of fiduciary duty; common law fraud; negligent misrepresentation; and, violation of the Georgia Securities Act of 1973. The causes of action relate to Claimant's investment in the ML-Montclair Capital Fund, LLC.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested rescissory damages in excess of \$757,404.00; all of Claimant's costs, expenses and disbursements, including attorneys' fees associated with this arbitration proceeding; pre-award and post-award interest; punitive damages in an amount to be determined by the arbitrators; and such other relief as the arbitration panel deemed just and proper.

Respondent requested that the arbitration panel reject Claimant's Statement of Claim in its entirety and order that all costs of this arbitration be borne by Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

The arbitrators, by unanimous decision, rule in favor of Respondent. All claims are dismissed with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$375.00
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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. In this matter, the member firm is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments for which fees were assessed were granted in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional

arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two Pre-hearing sessions with a single arbitrator @ \$450.00	= \$900.00
Pre-hearing conferences: July 15, 2003	1 session
October 17, 2003	1 session
One Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: March 17, 2003	1 session
Nine Hearing sessions @ \$1,200.00	= \$10,800.00
Hearing Dates: October 21, 2003	2 sessions
October 22, 2003	2 sessions
October 23, 2003	2 sessions
October 24, 2003	3 sessions
Total Forum Fees	= \$12,900.00

The Panel has assessed \$6,450.00 of the forum fees to Claimant.

The Panel has assessed \$6,450.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee	= \$375.00
Forum Fees	= \$6,450.00
Total Fees	= \$6,825.00
Less payments	= \$1,575.00

Balance Due NASD Dispute Resolution = \$5,250.00

Respondent is solely liable for:

Member Fees = \$7,000.00

Forum Fees = \$6,450.00

Total Fees = \$13,450.00

Less payments = \$11,000.00

Balance Due NASD Dispute Resolution = \$2,450.00

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

ARBITRATION PANEL

Christopher J. Moran, Jr., Esq. - Public Arbitrator, Presiding Chair

Consuelo L. Kertz, J.D. - Public Arbitrator

Perry L. Taylor, Jr., Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/_____
Christopher J. Moran, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/S/_____
Consuelo L. Kertz, J.D.
Public Arbitrator

Signature Date

_____/S/_____
Perry L. Taylor, Jr., Esq.
Non-Public Arbitrator

Signature Date

November 13, 2003

Date of Service (For NASD Dispute Resolution office use only)

11/07/2003 11:00

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Perry L. Taylor, Jr., Esq.	•	Non-Public Arbitrator

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Christopher J. Moran, Jr., Esq.
Public Arbitrator, Presiding Chair

11/9/03
Signature Date

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Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Public Arbitrator, Presiding Chair

Signature Date


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Public Arbitrator

11/10/03
Signature Date

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Perry L. Taylor, Jr., Esq.	-	Non-Public Arbitrator

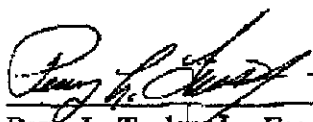
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Public Arbitrator, Presiding Chair

Signature Date

Consuelo L. Kertz, J.D.
Public Arbitrator

Signature Date



Perry L. Taylor, Jr., Esq.
Non-Public Arbitrator

13 Nov '03
Signature Date

Date of Service (For NASD Dispute Resolution office use only)