

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Marc Seymour

and

Case Number: 02-05001
Hearing Site: Houston, Texas

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

NATURE OF DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

Marc Seymour ("**Claimant**") was represented by Annette M. Henry, Esq., Houston, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**" or "**Respondent**") was represented by Linda Brooks, Esq., Ogden, Gibson, White, Brooks & Longoria, LLP, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about August 26, 2002. The Submission Agreement of Claimant, Marc Seymour, was signed on or about June 12, 2002.

Statement of Answer and Motion for a More Definite Statement was filed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., on or about October 25, 2002. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., did not sign a Submission Agreement.

Claimant filed a Response to the Motion for More Definite Statement on or about December 11, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, omission of facts, suitability, misrepresentations, violation of the DTPA and federal and state securities, and negligence. The causes of action related to the recommendations of the research department of Merrill Lynch. Claimant alleged that a conflict of interest existed within

Merrill Lynch's research department in that the firm's analysts issued false and misleading reports, which overstated the financial condition of certain companies because the companies also happened to be investment banking clients of the firm. Claimant alleged that, as a result of his reliance upon these fraudulent reports, he suffered financial losses.

Unless specifically admitted in its Answer, Respondent, Merrill Lynch, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's causes of action are barred in whole or in part by the doctrines of waiver, estoppel, quasi estoppel, equitable estoppel, and/or ratification; Claimant failed to state a claim upon which relief can be granted; Merrill Lynch is not liable to Claimant as Merrill Lynch's employees acted properly, in good faith, and in a commercially reasonable manner with respect to Claimant's account; Claimant assumed the risk of the investments held in his accounts with Merrill Lynch; and Claimant failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$1,000,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 = \$375.00

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, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

Adjournment Fees

Adjournments granted during these proceedings:

2/10/04 – 2/13/04, adjournment requested jointly = \$ 1,200.00

3/30/04 – 4/2/04, adjournment requested by Claimant = \$ 1,200.00

Forum Fees and Assessments

The Arbitration 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:

Three (3) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 1,350.00

Pre-hearing conferences: January 16, 2004 1 session
February 5, 2004 1 session
February 5, 2004 1 session

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: April 28, 2003 1 session
March 29, 2004 1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00

Hearing Dates: October 11, 2004 2 sessions
October 12, 2004 2 sessions
October 13, 2004 2 sessions
October 14, 2004 2 sessions

Total Forum Fees = \$ 13,350.00

The Arbitration Panel has assessed \$13,350.00 of the forum fees to Marc Seymour.

FEE SUMMARY

Claimant, Marc Seymour, is liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,800.00
Forum Fees	= \$13,350.00
Total Fees	= \$15,525.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$13,950.00

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for:

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 7,600.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

James P. Hoefling - Public Arbitrator, Presiding Chair
William A. Allen, CPA, Esq. - Public Arbitrator
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James P. Hoefling
James P. Hoefling
Public Arbitrator, Presiding Chair

October 22, 2004
Signature Date

/s/ William A. Allen, CPA, Esq.
William A. Allen, CPA, Esq.
Public Arbitrator

October 20, 2004
Signature Date

/s/ James R. Augustine
James R. Augustine
Non-Public Arbitrator

October 20, 2004
Signature Date

October 21, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

James P. Hoefling - Public Arbitrator, Presiding Chair
William A. Allen, CPA, Esq. - Public Arbitrator
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:



James P. Hoefling
Public Arbitrator, Presiding Chair

10-22-04

Signature Date

William A. Allen, CPA, Esq.
Public Arbitrator

Signature Date

James R. Augustine
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

James P. Hoefling - Public Arbitrator, Presiding Chair
William A. Allen, CPA, Esq. - Public Arbitrator
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

James P. Hoefling
Public Arbitrator, Presiding Chair

Signature Date



10/20/04

William A. Allen, CPA, Esq.
Public Arbitrator

Signature Date

James R. Augustine
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

James P. Hoefling - Public Arbitrator, Presiding Chair
William A. Allen, CPA, Esq. - Public Arbitrator
James R. Augustine - Non-Public Arbitrator

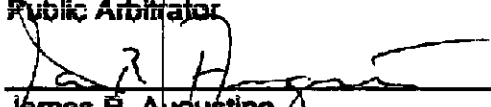
Concurring Arbitrators:

James P. Hoefling
Public Arbitrator, Presiding Chair

Signature Date

William A. Allen, CPA, Esq.
Public Arbitrator

Signature Date



James R. Augustine
Non-Public Arbitrator

10/20/2004

Signature Date

Date of Service (For NASD office use only)