

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael R. Petrucelli (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc.
(Respondent)

Case Number: 02-05197

Hearing Site: New York, New York

Nature of the Dispute: Customer v. Member.

REPRESENTATION OF PARTIES

Claimant Michael Petrucelli ("Petrucelli") hereinafter referred to as "Claimant": John J.E. Markham, II, Esq., Markham & Read, Boston, MA.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") hereinafter referred to as "Respondent": Bryan I. Reyhani, Esq. and Alyson M. Weiss, Esq., Loeb & Loeb, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 3, 2002.

Claimant signed the Uniform Submission Agreement: August 8, 2002.

Statement of Answer filed by Respondent on or about: December 9, 2002.

Respondent signed the Uniform Submission Agreement: December 10, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; breach of fiduciary duty; misrepresentation; and churning. Claimant's claim involved unspecified securities.

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 compensatory damages in the amount of \$5,000,000.00; punitive damages in the amount of \$3,000,000.00; costs; and other case-related costs.

Respondent requested that Claimant's Statement of Claim be denied in all respects and that the costs of this proceeding, including attorneys' fees, be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant provided a summary statement amending the compensatory damages to \$2,500,000.00 and punitive damages to be determined by the Panel.

Respondent made a motion to dismiss that was opposed by the Claimant. The Panel denied the motion.

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.

AWARD

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

1. Claimant's claims are denied in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEEES

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	= \$600.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 2-6, 2004 and February 9-11, 2004, joint adjournment request	= \$1,200.00
Claimant's share	= \$600.00

Respondent's share = \$600.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$1,200.00 = \$ 3,600.00

Pre-hearing conferences: June 3, 2003 1 session
February 2, 2004 1 session
February 13, 2004 1 session

Nine (9) Hearing sessions @ \$1,200.00 = \$10,800.00

Hearing Dates: June 21, 2004 2 sessions
June 22, 2004 2 sessions
June 23, 2004 2 sessions
June 24, 2004 2 sessions
June 25, 2004 1 session

Total Forum Fees = \$14,400.00

1. The Panel has assessed \$7,200.00 of the forum fees against Claimant.
2. The Panel has assessed \$7,200.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 7,200.00</u>
Total Fees	= \$ 8,400.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,600.00

2. Respondent is solely liable for:

Member Fees	= \$ 9,600.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 7,200.00</u>
Total Fees	= \$17,400.00
<u>Less payments</u>	<u>= \$10,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,200.00

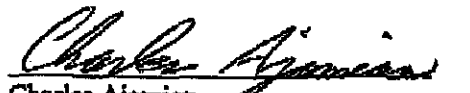
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Charles Ajamian	-	Public Arbitrator, Presiding Chairperson
Steven D. Leader	-	Public Arbitrator
Jean C. Black	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.


Charles Ajamian
Public Arbitrator, Presiding Chairperson

7-1-04
Signature Date

Steven D. Leader
Public Arbitrator

Signature Date

Jean C. Black
Non-Public Arbitrator

Signature Date

July 6, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Charles Ajamian
Steven D. Leader
Jean C. Black

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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Charles Ajamian
Public Arbitrator, Presiding Chairperson

Signature Date



Steven D. Leader
Public Arbitrator

July 5, 2004

Signature Date

Jean C. Black
Non-Public Arbitrator

Signature Date

July 6, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Charles Ajemian
Steven D. Leader
Jean C. Black

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

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Charles Ajemian
Public Arbitrator, Presiding Chairperson

Signature Date

Steven D. Leader
Public Arbitrator

Signature Date



Jean C. Black
Non-Public Arbitrator

6/30/04

Signature Date

July 6, 2004

Date of Service (For NASD Dispute Resolution use only)