

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Basil Nemer

vs.

Case Number: 02-05379
Hearing Site: Detroit, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc. and
Robert M. Dagenais

NATURE OF DISPUTE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Basil Nemer ("Claimant") was represented by Laurence S. Schultz, Esq., Driggers, Schultz & Herbst, Troy, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc., ("Merrill Lynch") and Robert M. Dagenais ("Dagenais") hereinafter collectively referred to as "Respondents," were represented by Daniel Savrin, Esq., Bingham McCutchen, Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about September 10, 2002.

The Uniform Submission Agreement of Basil Nemer was signed on or about August 8, 2002.

The Statement of Answer was filed jointly by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Robert M. Dagenais, on or about November 8, 2002.

The Uniform Submission Agreement was signed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., on or about November 7, 2002.

The Uniform Submission Agreement was signed by Respondent, Robert M. Dagenais, on or about October 31, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; misrepresentations, omissions, and deceptive devices; breach of contract; violation of NASD Rules; violation of New York Stock Exchange Rules; and respondeat superior. The causes of action arose from the recommendation and purchase of Excite@Home stock.

Unless specifically admitted in their Answer, Respondents, Merrill Lynch and Dagenais, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following:

Claimant fails to state a claim for which relief can be granted; Claimant suffered no damages because of the acts of Merrill Lynch; Claimant failed to mitigate damages, if any, by refusing to sell stock positions even as they continued to decline over the life of his accounts; Claimant assumed the risk of these transactions and therefore may not recover; Claimant's alleged losses were proximately caused by his own conduct, negligence, comparative or contributory negligence in relation to the transactions complained of by him, and therefore, Claimant is precluded from recovery, to the extent that Claimant knew or was on notice of the transactions in his accounts and in fact authorized these transactions, he may not recover; Claimant's claims are barred by the applicable statutes of limitations; Claimant's alleged claims are barred by the defenses of estoppel, waiver, and laches; Respondents are not liable to Claimant in any amount because, at all times relevant herein, they acted properly, in good faith and in a commercially reasonable manner with respect to Claimant's accounts; all transactions upon which Claimant bases his alleged claims against Respondents were conducted in accordance with all applicable Exchange rules and regulations and in compliance with all applicable provisions of state and federal law; Claimant is not entitled to any recovery because his alleged claims are barred by the equitable doctrine of unclean hands; there is no legal basis for a damage claim based on the theory that an investor decided not to sell a stock based on the statement of another; Claimant's claims are barred because Respondents did not cause, legally, proximately or otherwise, his injuries; Claimant is not entitled to an award of attorney's fees, punitive damages, interest or the costs of this proceedings; to the extent that Claimant asserts claims for alleged violations of NASD or NYSE Rules, no such private right of actions exists; Claimant failed to use the requisite due diligence in monitoring, trading, managing, and handling his accounts; and all activity in the account was suitable for and consistent with Claimant's stated investment objectives.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$125,000.00
Punitive Damages	Unspecified
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified
Attorney's Fees	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees and that the Panel recommend that all the references to this matter be expunged from the CRD records of Robert M. Dagenais.

OTHER ISSUES CONSIDERED & DECIDED

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

Pursuant to the parties' agreement, and after considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) The parties have agreed to settle this matter for a sum certain to be paid by Respondent, Merrill Lynch Pierce Fenner & Smith Inc.;
- 2.) Claimant's claims are hereby dismissed in their entirety with prejudice, and all other requests for relief are denied;
- 3.) All parties are to bear their own attorney's fees;
- 4.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert M. Dagenais's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Dagenais must obtain

confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

- 5.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 6.) Any and all relief not specifically addressed, 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 = \$ 300.00

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

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

October 28-30, 2003, requested by Respondents	= \$1,125.00
June 22-24, 2004, requested by Respondents	= \$1,500.00

Forum Fees and Assessments

The 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:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: March 24, 2003 1 session	
Total Forum Fees	= \$1,125.00

The Panel has assessed \$ 375.00 of the forum fees to Claimant, Basil Nemer.

The Panel has assessed \$ 375.00 of the forum fees to Respondent, Merrill Lynch Pierce Fenner & Smith, Inc.

The Panel has assessed \$ 375.00 of the forum fees to Robert M. Dagenais.

Fee Summary

Claimant, Basil Nemer, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 675.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Refunded to Claimant	= \$ 750.00

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

Member Fees	= \$5,200.00
Forum Fees	= \$ 375.00
Total Fees	= \$5,575.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 375.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Robert M. Dagenais are jointly and severally liable for:

Adjournment Fees	= \$2,625.00
Total Fees	= \$2,625.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$2,625.00

Respondents, Robert M. Dagenais, is liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 375.00

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

ARBITRATION PANEL

Michael J. Meeusen - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
James Richter - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Michael J. Meeusen
Michael J. Meeusen
Public Arbitrator, Presiding Chair

11/04/04
Signature Date

/s/ Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

10/29/04
Signature Date

/s/ James Richter
James Richter
Non-Public Arbitrator

10/28/04
Signature Date

11/09/04
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.
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Michael J. Meeusen - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
James Richter - Non-Public Arbitrator

Concurring Arbitrators:

Michael J. Meeusen
Public Arbitrator, Presiding Chair

Signature Date

Jerome d. Sobczak
Public Arbitrator

Signature Date



James Richter
Non-Public Arbitrator

10-28-04


Signature Date

Date of Service (For NASD office use only)

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Jerome D. Sobczak - Public Arbitrator
James Richter - Non-Public Arbitrator

Concurring Arbitrators:


Michael J. Meeusen
Public Arbitrator, Presiding Chair

11-4-04
Signature Date

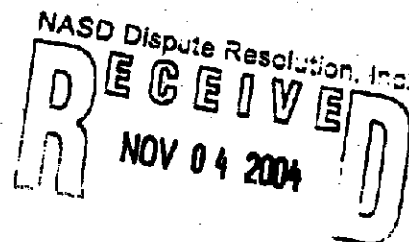
Jerome d. Sobczak
Public Arbitrator

Signature Date

James Richter
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)



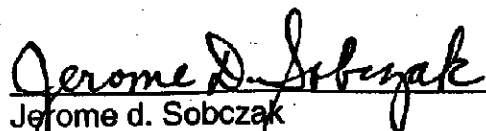
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Concurring Arbitrators:

Michael J. Meeusen
Public Arbitrator, Presiding Chair

Signature Date



Jerome d. Sobczak
Public Arbitrator

11-02-04

Signature Date

James Richter
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)