

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jim Stepanian, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Inc., Respondent

Case Number: 02-05392

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Lee G. Werner, Esq.
Carroll & Werner LLP
Orange, California

For Respondent:

Susan L. Hoffman, Esq.
Bingham McCutchen LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: September 6, 2002

Amended Statement of Claim filed: May 29, 2003

Claimant's Uniform Submission Agreement signed: September 30, 2002

Statement of Answer and Motion for a More Definite Statement of Claim filed by Respondent:
January 9, 2003

Respondent's Uniform Submission Agreement signed: November 20, 2002

CASE SUMMARY

In the Statement of Claim, Claimant alleged breach of fiduciary duty, omission of facts and manipulations, involving unspecified securities.

In the Amended Statement of Claim, Claimant added the allegations of fraud, negligence, lack of supervision, and violation of the Consumer Legal Remedies Act.

In the Answer and Answer to the Amended Statement of Claim, Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$500,000.00 in compensatory damages and \$500,000.00 in punitive damages.

In the Amended Statement of Claim, Claimant amended his damages to request \$300,000.00 in compensatory damages, unspecified damages to compensate for personal injuries, and costs including attorney's fees.

In the Answer and Answer to the Amended Statement of Claim, Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

At the initial pre-hearing conference on February 10, 2003, the Panel ruled that the Claimant shall file an Amended Statement of Claim on or before May 30, 2003 and that Respondent shall file an Amended Answer by June 30, 2003.

On January 14, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On March 17, 2003, Respondent's counsel signed a Waiver Agreement on its behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On February 4, 2004, Claimant filed a Motion to file a Second Amended Statement of Claim. On February 13, 2004, Respondent filed an Objection to Filing of Second Amended Statement of Claim. After due deliberation, the Panel denied Claimant's motion without prejudice. The Panel further ruled that any reconsideration of the motion must be accompanied by a statement of good cause as to why the Panel should consider the filing of the Second Amended Complaint, affidavit(s) in support of the stated good cause, and a deposit of postponement fee to be paid to NASD if motion granted.

On February 25, 2004, Respondent filed a Motion in Limine to Preclude Admission of PIABA Articles into Evidence and a Motion in Limine to Preclude Admission of the Dinallo Affidavit into Evidence. After due deliberation, the Panel granted both motions.

At the hearing on March 8, 2004, the Panel heard oral argument on Claimant's Motion to Amend the Statement of Claim to include churning allegations. After due deliberation, the Panel granted 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) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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	= \$ 375.00
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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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

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 Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conferences: April 30, 2003 1 session	
1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conferences: September 9, 2003 1 session	
9 Hearing sessions @ \$1,125.00/session	= \$10,125.00
Hearings: March 8, 2004 2 sessions	
March 9, 2004 2 sessions	
March 10, 2004 2 sessions	
March 11, 2004 2 sessions	
March 12, 2004 1 session	

Total Forum Fees	= \$12,450.00
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1. The Panel assessed \$ 11,287.50 of the forum fees to Claimant.
2. The Panel assessed \$ 1,162.50 of the forum fees to Respondent.

Fee Summary

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

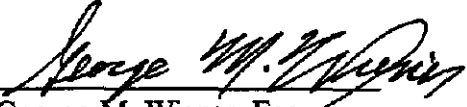
Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$11,287.50</u>
Total Fees	= \$11,662.50
<u>Less payments</u>	<u>= \$(1,575.00)</u>
Balance Due NASD Dispute Resolution	= \$10,087.50
2. Respondent is charged with the following fees and costs:

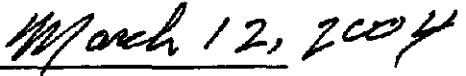
Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 1,162.50</u>
Total Fees	= \$ 8,162.50
<u>Less payments</u>	<u>= \$(7,000.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,162.50

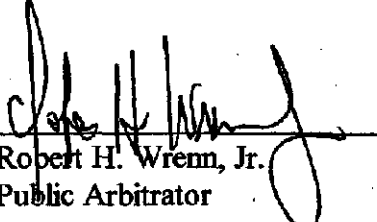
ARBITRATION PANEL

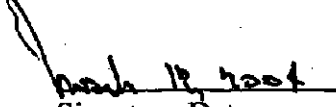
George M. Wiener, Esq.	-	Public Arbitrator, Presiding Chair
Robert H. Wrenn, Jr.	-	Public Arbitrator
Luther Delano Prater	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures


George M. Wiener, Esq.
Chair, Public Arbitrator


Signature Date


Robert H. Wrenn, Jr.
Public Arbitrator


Signature Date


Luther Delano Prater
Non-Public Arbitrator


Signature Date


Date of Service