

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith, Inc.

Case Number: 02-5815

and

Name of Respondents

Jose M. Rizo and Nivia Rizo

Hearing Site: St. Louis, MO

REPRESENTATION OF PARTIES

Claimant, Merrill Lynch Pierce Fenner & Smith, Inc., (hereinafter referred to as "Claimant") was represented by Jacqueline P. Ulin Esq. of Armstrong Teasdale, LLP located in St. Louis, Missouri.

Respondents Jose M. Rizo and Nivia Rizo (hereinafter referred to as "Respondents") did not file an Answer or a Uniform Submission Agreement and did not appear at the hearing of this matter.

CASE INFORMATION

The Statement of Claim was filed on or about September 30, 2002. The Uniform Submission Agreement was signed on September 9, 2002.

Respondents did not file an Answer or Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged the following cause of action: failure to pay debt balance on promissory notes.

Claimant alleged that Respondents incurred a debt in an account established in the amount of \$215,587.85. Claimant alleged that Respondents each executed promissory notes (the "Notes") to Claimant in which Respondents were obligated to pay \$2,000 per month for ten (10) months commencing on January 2, 2001 and to pay remaining balance on November 1, 2001 at a rate of 9.625% per annum, charged against the unpaid principal balance. Claimant further alleged that Respondents defaulted on the Notes and remain indebted to Claimant in the amount of \$183,422.57 as and for principal, \$5,489.47 as and for accrued interest through September 26, 2002, and for interest at a rate of 9.625% per annum. Claimant further seeks to recover its attorney's fees related to this claim.

Respondents did not file an Answer to Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant Merrill Lynch requested an award in the amount of:

Compensatory Damages	\$183,422.57
Interest	\$ 5,489.47
Attorneys' Fees	unspecified
Forum Fees and Other Costs	unspecified

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondents have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and Respondents' account agreement, and are bound by the determination of the Panel on all issues submitted.

At the hearing, Claimant filed a Motion to Bar Respondents from Presenting Any Evidence or Defenses. Respondents' failure to appear at the hearing caused Claimant's motion to be moot.

AWARD

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

1. Respondents Jose M. Rizo and Nivia Rizo are jointly and severally liable for and shall pay Claimant Merrill Lynch Pierce Fenner & Smith, Inc. the sum of \$204,019.40 as compensatory damages, plus interest at the rate of 9.625% per annum accruing from August 6, 2003 until award is paid in full.
2. Respondents Jose M. Rizo and Nivia Rizo are jointly and severally liable for and shall pay Claimant Merrill Lynch Pierce Fenner & Smith, Inc. the sum of \$5,414.50 for attorney's fees. In deciding to award attorney's fees, the Panel considered the contracts executed by the parties on December 20, 2000 and determined that authority existed for an award of attorney's fees to the Claimants.

3. Respondents Jose M. Rizo and Nivia Rizo are jointly and severally liable for and shall pay Claimant Merrill Lynch Pierce Fenner & Smith, Inc. the sum of \$1,000.00 for reimbursement for the non-refundable NASD Dispute Resolution filing fee.
4. In addition, Respondents Jose M. Rizo and Nivia Rizo are jointly and severally liable for and shall pay Claimant Merrill Lynch Pierce Fenner & Smith, Inc. the sum of \$445.92 as out of pocket costs associated with this hearing.
5. Parties shall bear their own costs, except as specified herein.
6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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	= \$1,000.00
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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. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. is assessed the following fees:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= <u>\$2,750.00</u>
Total	= \$5,200.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Initial Pre-hearing session with a full Panel at \$1,125.00	= \$1,125.00
Pre-hearing conference: May 6, 2003	1 session

Two (2) Hearing sessions at \$1,125.00	= \$2,250.00
<u>Hearing Dates:</u> August 5, 2003 <u>2 sessions</u>	
Total Forum Fees	= \$3,375.00

The Panel has assessed \$3,375.00 of the forum fees to Respondents Jose M. Rizo and Nivia Rizo.

Fee Summary

1. Claimant Merrill Lynch Pierce Fenner & Smith, Inc. is solely liable for:

Initial Filing Fee	= \$1,000.00
<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$6,200.00
<u>Less Payments</u>	= \$7,325.00
Refund Due to Claimant	= \$1,125.00

2. Respondents, Jose M. Rizo and Nivia Rizo, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$3,375.00
Total Fees	= \$3,375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,375.00

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

ARBITRATION PANEL

Donald A. Estell	-	Non-Public Arbitrator, Presiding Chair
Theresa A. Secrest	-	Non-Public Arbitrator
Dennis Jay Capriglione, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators Signatures

Donald A. Estell
Non-Public Arbitrator, Presiding Chair

9/30/03
Signature Date

Theresa A. Secrest
Non-Public Arbitrator

9/30/03
Signature Date

Dennis Jay Capriglione, Esq.
Non-Public Arbitrator

9/26/03
Signature Date


10/1/03
Date of Service (for NASD Dispute Resolution Only)

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ARBITRATION PANEL

Donald A. Estell	-	Non-Public Arbitrator, Presiding Chair
Theresa A. Secret	-	Non-Public Arbitrator
Dennis Jay Caprighione, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators Signatures


Donald A. Estell
Non-Public Arbitrator, Presiding Chair

Sept. 30, 2003
Signature Date

Theresa A. Secret
Non-Public Arbitrator

Signature Date

Dennis Jay Caprighione, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (for NASD Dispute Resolution Only)

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Non-Public Arbitrator, Presiding Chair

Signature Date

Theresa A. Secrest

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Non-Public Arbitrator

9/30/03
Signature Date

Dennis Jay Capriglione

Dennis Jay Capriglione, Esq.
Non-Public Arbitrator

9/26/2003
Signature Date

Date of Service (for NASD Dispute Resolution Only)