

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
John J. Woytowitz

Case Number: 02-06095

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
David P. Marshall

Hearing Site: Baltimore, Maryland

Nature of the Dispute: Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Claimant, John J. Woytowitz, "Claimant", was represented by John H. West, III, Esq. and James H. West, Esq., West & Moore, LLC, Baltimore, Maryland.
Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and David P. Marshall ("Marshall"), hereinafter collectively referred to as "Respondents", were represented by Brian F. Amery, Esq. and Dennise S. Mulvihill, Esq., Bressler, Amery & Ross, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on October 10, 2002.
Claimant signed the Uniform Submission Agreement on October 25, 2002.
Joint Statement of Answer filed by Respondents on February 4, 2003.
Respondent Marshall signed the Uniform Submission Agreement on February 15, 2003.
Respondent MLPFS did not file an executed Uniform Submission Agreement with NASD Dispute Resolution.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract; negligence; fraud; constructive fraud; breach of fiduciary duty; negligent misrepresentation/omission; suitability; negligent supervision, and; violation of Maryland Securities Act. The causes of action relate to the purchase of various securities including Internet Capital Group, Inc. and At Home Corporation a/k/a Excite@Home Corp.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim

fails to state a claim upon which relief can be granted; failure to mitigate damages; Claimant's injuries or damages are due to the acts or omissions of third parties over which Respondents had no control or right to control; Claimant's claims are barred by the doctrines of laches, waiver, estoppel and ratification; and, statute of limitations.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

In their Statement of Answer, Respondents requested that the Arbitration Panel (the "Panel") dismiss the Statement of Claim in its entirety; that all costs be assessed against Claimant; and, that all references to this matter be expunged from the Central Registration Depository ("CRD") records of Respondent Marshall.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent MLPFS did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim and appeared at the hearing, is bound by the determination of the Panel on all issues submitted.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent MLPFS is liable to and shall pay to Claimant the sum of fifteen thousand dollars (\$15,000);
2. Respondent Marshall is liable to and shall pay to Claimant the sum of fifteen thousand dollars (\$15,000.00);
3. The parties shall each bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,

4. Any and all relief not specifically addressed herein 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	= \$ 250.00
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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, MLPFS is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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) Pre-hearing session with Panel @ \$1,000.00	= \$ 1,000.00
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Pre-hearing conference:	June 9, 2003	1 session
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Twelve (12) Hearing sessions with Panel @ \$1,000.00	= \$12,000.00
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Pre-hearing conferences	October 13, 2003	2 sessions
	October 14, 2003	2 sessions
	October 15, 2003	2 sessions
	October 22, 2003	2 sessions
	November 24, 2003	2 sessions
	November 25, 2003	2 sessions

Total Forum Fees	= \$13,000.00
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1. The Panel has assessed \$4,333.33 of the forum fees to Claimant.
2. The Panel has assessed \$4,333.33 of the forum fees to Respondent MLPFS.
3. The Panel has assessed \$4,333.33 of the forum fees to Respondent Marshall.

Fee Summary

1. Claimant is assessed and shall pay:	
Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 4,333.33
Total Fees	= \$ 4,583.33
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,008.33
2. Respondent Merrill is assessed and shall pay:	
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 4,333.33
Total Fees	= \$ 8,783.33
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 4,433.33
3. Respondent Marshall is assessed and shall pay:	
Forum Fees	= \$ 4,433.33
Total Fees	= \$ 4,433.33
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 4,333.33

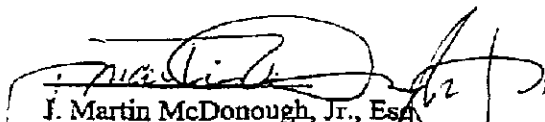
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

J. Martin McDonough, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
James W. Geiger	-	Public Arbitrator, Panelist
Baunita M. Greer	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures


J. Martin McDonough, Jr., Esq.
Public Arbitrator, Presiding Chairperson

1/5/2004
Signature Date

James W. Geiger
Public Arbitrator, Panelist

Signature Date

Baunita M. Greer
Non-Public Arbitrator, Panelist

Signature Date

01/09/04
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

J. Martin McDonough, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


James W. Geiger
Public Arbitrator, Panelist

1/7/04
Signature Date

Bannita M. Greer
Non-Public Arbitrator, Panelist

Signature Date

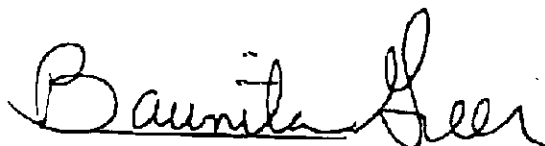
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Non-Public Arbitrator, Panelist

Signature Date

Signature Date

1-8-04
Signature Date

01/09/04
Date of Service (For NASD Dispute Resolution office use only)