

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Im Young Ahn (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kenneth K. Yoo (Respondents)

Case Number: 02-06201

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Im Young Ahn ("Ahn") hereinafter referred to as "Claimant" - *Pro se*.
Previously represented by: Peter S. Jeon, Esq., Law Office of Peter S. Jeon, P.C., New York, NY, and Gerard A. Riso, Esq., Stein Riso Mantel, LLP, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kenneth K. Yoo ("Yoo") hereinafter collectively referred to as "Respondents": Brooke E. Pietrzak, Esq., Dorsey & Whitney, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: October 16, 2002.

Reply filed on or about June 5, 2003.

Claimant signed the Uniform Submission Agreement: October 2, 2002.

Joint Statement of Answer filed by Respondents on or about: May 23, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 19, 2003.

Respondent Yoo signed the Uniform Submission Agreement: May 22, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentation; breach of duty of care; violation of NASD Rules of Fair Practice; unauthorized trading; excessive trading; fraud; breach of fiduciary duty; and failure to supervise. Claimant's claim involved unspecified common stock.

Unless specifically admitted in the Reply, Claimant denied the allegations made in the request for attorneys' fees and costs and asserted an affirmative defense.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$820,000.00, plus pre-award interest; punitive damages; attorneys' fees; costs; and expenses. In the Reply to the request for attorneys' fees and costs, Claimant requested that the request for attorneys' fees and costs be dismissed.

Respondents requested that the claim be dismissed in its entirety and that they be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 30, 2004, the Panel issued the following:

"A discovery teleconference was previously scheduled for and held on May 27, 2004. At that time Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kenneth K. Yoo, contended that Claimant had failed to provide any response to their discovery requests, and sought an Order to compel response. Claimant, although given notice of that teleconference hearing, failed to appear.

As noted in the Panel's May 27, 2004 Order: 'At the start of the conference, the operator reported that she could not contact Claimant, Im Young Ahn. At that time the chairperson directed the conference operator to attempt to contact the Claimant at the telephone number listed on her claim information sheet. The operator advised that there was no answer. The conference operator was then directed to attempt, using director assistance, to contact Claimant at her stated address. This was also unsuccessful. The Claimant having been notified of the conference by NASD, and two additional attempts to contact her having been made at the start of the conference, the conference proceeded without Claimant.'

The Panel was aware that Claimant had had two previous attorneys, neither of whom had appeared on her behalf at either of the two prior scheduling conferences, and neither of whom represented her on May 27, 2004, and both of whom had notified NASD that they no longer represented her. The Panel was also aware that Claimant had not obtained new counsel. The Panel also notes that Claimant did not appear (*pro se* or otherwise) at either of these scheduling conferences, and has not participated in any of the proceedings in this action to date. Notwithstanding, after hearing the argument of Counsel for Respondents, the Panel ordered that the Claimant be compelled to provide responses to Respondents' discovery requests, but allowed sufficient time for the non-appearing Claimant to both obtain new legal counsel, and have that counsel develop a response to the Respondents' requests to produce.

The Order provided: 'Thus, the Panel **ORDERS**, that Claimant's responses must be in the hands of Respondents no later than 4PM on July 27, 2004. The decision to allow an extended, 60-day response period is made in order to allow Claimant sufficient time both to obtain legal counsel and provide the required responses.'

The Order further provided that a follow-up discovery conference was to be scheduled on a date convenient to the entire Panel of Arbitrators and to the Parties on or after July 28, 2004.

In describing the purpose of the follow-up conference the Panel noted that if at that time: '...Claimant has not fully complied with this order, or shown good cause why she has not done so, the entire Panel will be available to consider further motions to compel; the imposition of sanctions, or any other action deemed appropriate by the Panel, including, but not limited to dismissal of Claimant's claim.'

As set forth in the May 27, 2004 Order, the follow-up discovery teleconference was, in fact, held on July 29, 2004. Again, Claimant did not appear. For the record it is noted that prior to this teleconference the Panel was advised by NASD that all attempts to deliver mail to Claimant at any of her known or disclosed addresses were unsuccessful. At the start of the teleconference, the Conference operator advised that the attempt to contact Claimant at the telephone number Claimant had provided by Claimant was also unsuccessful, and that when dialed, a message stated that the number had been disconnected.

In a final attempt to contact Claimant, Respondents were asked, during the teleconference, to check if any of Claimant's accounts remained open, and, if so, ascertain whether there was an address listed for the account. Respondents did so, and reported to the Panel that Claimant had one open IRA account with a balance of one Dollar (\$1.00). The record address listed for this account was the same address as Claimant's business, and was the same address at which NASD had unsuccessfully sent mail notification to Claimant.

The Panel being satisfied, therefore, that all possible attempts that could have been made to contact Claimant, had in fact been made, and that Claimant could not be found, finds as follows:

1. Claimant has failed to keep NASD notified of her location.
2. Claimant has failed to prosecute this action.
3. Claimant has abandoned this action.
4. Claimant has failed to provide any response at all to Respondents' discovery requests.

At the July 29, 2004 teleconference, Counsel for Respondents confirmed that in the interval between May 28, 2004 and July 29, 2004 Claimant had not provided responses to

any of their discovery requests. Counsel for Respondents then moved for the dismissal of the Statement of Claim filed by Claimant. At the completion of Respondents' presentation, the Panel remained in executive session to deliberate the issues.

Thus, after consideration of the argument of Counsel for Respondents, and of the Panel's findings, as set forth above, the full Panel unanimously **ORDERS** that Claimant's Claim and Statement of Claim, as against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kenneth K. Yoo, be **Dismissed, with Prejudice**. The Panel further **ORDERS** that all administrative charges and forum fees in this action be assessed against Claimant."

AWARD

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

1. Claimant's claim is dismissed with prejudice.
2. 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	= \$375.00
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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	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: May 27, 2004 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$3,600.00
Pre-hearing conferences: September 8, 2003 1 session
February 23, 2004 1 session
July 29, 2004 1 session

Total Forum Fees = \$4,050.00

1. The Panel has assessed forum fees of \$4,050.00 against the Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$4,050.00
Total Fees	= \$4,425.00
<u>Less payments</u>	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$2,850.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$7,000.00
Total Fees	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

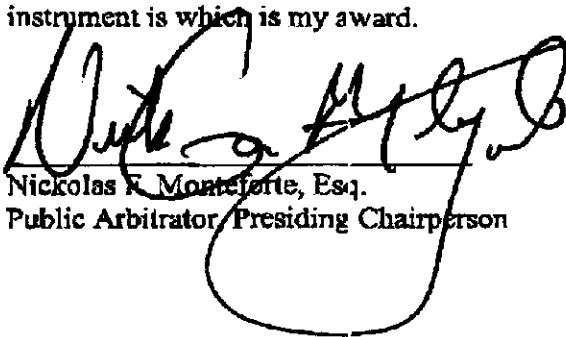
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Nickolas F. Monteforte, Esq.	-	Public Arbitrator, Presiding Chairperson
Harry Reicher, Esq.	-	Public Arbitrator
John J. Bucko	-	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 is which is my award.



Nickolas F. Monteforte, Esq.
Public Arbitrator, Presiding Chairperson

Aug 12, 2004
Signature Date

Harry Reicher, Esq.
Public Arbitrator

Signature Date

John J. Bucko
Non-Public Arbitrator

Signature Date

August 12, 2004

Date of Service (For NASD Dispute Resolution use only)

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Nickolas F. Monteforte, Esq. -	Public Arbitrator, Presiding Chairperson
Harry Reicher, Esq. -	Public Arbitrator
John J. Bucko -	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.

Nickolas F. Monteforte, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Harry Reicher, Esq.
Public Arbitrator

August 9 04

Signature Date

John J. Bucko
Non-Public Arbitrator

Signature Date

August 12, 2004

Date of Service (For NASD Dispute Resolution use only)

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Harry Reicher, Esq.	-	Public Arbitrator
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Concurring Arbitrators' Signatures

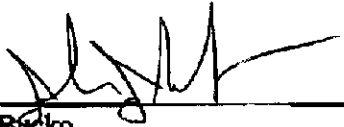
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Nickolas F. Monteforte, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Harry Reicher, Esq.
Public Arbitrator

Signature Date



John J. Bucko
Non-Public Arbitrator
August 12, 2004

8/4/2004

Signature Date

Date of Service (For NASD Dispute Resolution use only)