

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Landis S. Everson, Trustee for the Landis S. Everson Family Trust, Claimant v. Merrill Lynch,  
Pierce, Fenner & Smith Incorporated and Martin Barry Epperson, Respondents

Case Number: 02-06312

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Sig M. Haddad, Esq.  
Attorney at Law  
San Luis Obispo, California

For Respondents:

Ben Suter, Esq.  
Benjamin W. White, Esq.  
Keesal, Young & Logan  
San Francisco, California

**CASE INFORMATION**

*Statement of Claim filed:* October 17, 2002

*Amendment to Statement of Claim:* October 28, 2003

*Claimant's Uniform Submission Agreement signed:* October 16, 2002

*Joint Statement of Answer filed by Respondents:* January 6, 2003

*Joint Statement of Answer to Amendment to Statement of Claim filed by Respondents:*  
November 14, 2003

*Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed:* November 25, 2002

*Respondent Martin Barry Epperson's Uniform Submission Agreement signed:* November 25, 2002

### **CASE SUMMARY**

In the Statement of Claim, Claimant alleged negligence, negligent misrepresentation, intentional misrepresentation, and fraud and deceit, involving various securities including ADC Telecommunication, Worldcom, and Verizon.

In the Amendment to the Statement of Claim, Claimant added the allegation that \$30,000.00 was missing from a deposit that Claimant made to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and Amendment to the Statement of Claim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested \$215,307.59 in compensatory damages, \$3,000,000.00 in punitive damages, prejudgment interest at the rate of 10% per annum, and costs, including attorney's fees.

In the Amendment to the Statement of Claim, Claimant increased the amount of compensatory damages requested by \$30,000.00, for a total of \$245,307.59.

Respondents requested dismissal with prejudice of the Claimant's Statement of Claim and Amendment to the Statement of Claim in their entirety, expungement of all reference to this matter from Respondent Martin Barry Epperson's CRD record, and costs, including forum fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On October 28, 2003, Claimant filed a request to Amend the Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). On November 14, 2003, Respondents filed an Answer to the Amendment to Statement of Claim. On November 25, 2003, the Panel issued an order stating that they would allow the Amendment to the Statement of Claim. At the evidentiary hearing, Claimant withdrew the allegations asserted in the Amendment to the Statement of Claim.

On June 2, 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 June 19, 2003, Respondents' counsel signed a Waiver Agreement on their behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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 Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Martin Barry Epperson'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 Martin Barry Epperson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 600.00
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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 Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

**Adjournment Fees**

The following adjournment fees are assessed:

January 21-23, 2004 hearing adjournment requested by parties	= \$ 1,200.00
October 27-29, 2004 hearing adjournment requested by parties	= \$ 1,500.00

1. Pursuant to Code of Arbitration Procedure Rule 10403(b), \$1,200.00 of the adjournment fees were waived.
2. The Panel waived \$1,500.00 of the adjournment fees.

**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 Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
August 25, 2003	1 session
April 19, 2004	1 session
January 3, 2005	1 session

6 Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings:	
August 31, 2005	2 sessions
September 1, 2005	2 sessions
September 2, 2005	2 sessions

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<b>Total Forum Fees</b>	<b>= \$10,800.00</b>
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1. The Panel assessed \$1,800.00 of the forum fees to Claimant.
2. The Panel assessed \$9,000.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

**Fee Summary**

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

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 1,800.00
Total Fees	= \$ 2,400.00
Less payments	= \$(1,700.00)
<u>Less unused mediation deposit</u>	= \$( 180.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 520.00</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

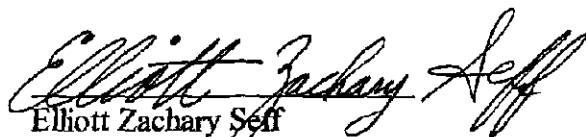
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 9,000.00
Total Fees	= \$17,550.00
Less payments	= \$( 8,550.00)
<u>Less unused mediation deposit</u>	= \$( 180.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 8,820.00</b>

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

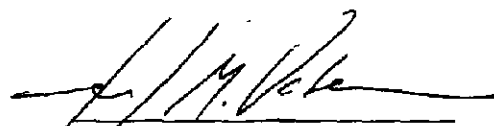
ARBITRATION PANEL

Elliott Zachary Seff	-	Public Arbitrator, Presiding Chair
Leonard M. Vosen	-	Public Arbitrator
Kenneth I. Rosenblum	-	Non-Public Arbitrator

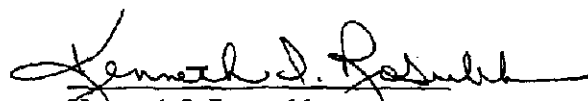
Concurring Arbitrators' Signatures

  
Elliott Zachary Seff  
Chair, Public Arbitrator

September 2, 2005  
Signature Date

  
Leonard M. Vosen  
Public Arbitrator

September 2, 2005  
Signature Date

  
Kenneth I. Rosenblum  
Non-Public Arbitrator

September 2, 2005  
Signature Date

9/6/05  
Date of Service