
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Emily Buxbaum

Case Number: 02-06481

Name of the Respondents
Merrill Lynch Pierce Fenner & Smith, Inc. and
Alan Taxman

Hearing Site: St. Louis, Missouri

REPRESENTATION OF PARTIES

Jack Fishman, Esq. of The Fishman Law Firm, P.C. located in St. Louis, Missouri represented Claimant, Emily Buxbaum, hereinafter referred to as "Claimant."

Daren A. Luma, Esq. of Merrill Lynch Pierce Fenner & Smith, Inc. located in New York, New York filed an appearance on behalf of Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and Alan Taxman ("Taxman"), hereinafter collectively referred to as "Respondents." Respondents Merrill and Taxman were later represented by Scott Kozak, Esq. of the firm Armstrong Teasdale, LLP located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on October 29, 2002.

Claimant, Emily Buxbaum, signed the Uniform Submission Agreement on August 15, 2002

Joint Statement of Answer filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Alan Taxman on March 11, 2003.

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. signed the Uniform Submission Agreement on March 3, 2003.

Respondent Alan Taxman did not submit a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, misrepresentations, churning and suitability. The causes of action relate to the order execution of stocks in EMC Corporation, Intel Corporation, Cisco Systems, Inc. and Ericson. Claimant alleged that the investments were speculative in nature and did not meet Claimant's needs and objectives.

Unless specifically admitted in its Answer, Respondents Merrill and Taxman denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim against Respondents upon which relief can be granted.

2. Claimant has not suffered any damages by the acts of Taxman and Merrill Lynch.
3. Claimant has, acting with full knowledge and notice of the facts, ratified, approved, accepted acquiesced and confirmed in all respects the acts complained of in the Statement of Claim.
4. Pursuant to the terms of the customer agreements executed by Claimant, all substantive claims raised by Claimant with respect to her accounts are to be determined under New York law.
5. Claimant is estopped by her conduct from asserting any and all claims alleged in the Statement of Claim against Respondents.
6. By her conduct, Claimant has waived any claims against Respondents that may be alleged in the Statement of Claim.
7. Respondents acted in a commercially reasonable manner, consistent with their obligations and responsibilities toward Claimant.
8. Claimant assumed the risk of the investments that she made through Respondents and through her unilateral decisions regarding when to purchase and whether to hold such securities.
9. Claimant is not entitled to any recovery because she expressly authorized and approved all of the transactions in her account prior to their execution.
10. Claimant is not entitled to any recovery because her alleged claims are barred by laches.
11. Claimant is not entitled to any recovery because her claim is barred by the equitable defense of unclean hands.
12. All transactions upon which Claimant bases her claim against Respondents were conducted in accordance with all applicable securities industry rules and regulations.
13. Claimant is not entitled to an award of attorney's fees, punitive damage, interest or the costs of this proceeding.

RELIEF REQUESTED

Claimant requested:

| | |
|--|-------------|
| Compensatory Damages | \$38,000.00 |
| Punitive Damages | unspecified |
| Interest | unspecified |
| Attorneys' Fees | unspecified |
| Other Costs | unspecified |
| Other Monetary/Non-Monetary Relief if any: | unspecified |

Respondents request that the Panel issue an award: (1) dismissing the Statement of Claim in its entirety; (2) directing that the registration file of Alan Taxman be expunged of any references to this claim; and (3) that Claimant be ordered to pay all fees and costs in connection with this Arbitration, together with such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Alan Taxman, 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, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

AWARD

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

1. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Alan Taxman, are jointly and severally liable for and shall pay to Claimant, Emily Buxbaum, the sum of \$16,415.00 as compensatory damages, plus interest at a rate of 9% per annum, accruing from March 21, 2003 until October 2, 2003.
2. Parties shall bear their own costs, including attorney's fees, except as specified herein.
3. Any and all other 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 | = \$ 175.00 |
|--------------------------|-------------|

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 to this case and is assessed the following fees:

| | |
|--------------------------|---------------------|
| Member surcharge | = \$ 875.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$1,000.00 |
| Total Member Fees | = \$2,625.00 |

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|---|---------------------|
| (1) Pre-hearing session with a single arbitrator @ \$450.00 | = \$ 450.00 |
| Pre-hearing conference: July 16, 2003 1 session | |
| Three (3) Hearing sessions @ \$450.00 | = \$1,350.00 |
| Hearing Dates: October 1, 2003 2 sessions | |
| October 2, 2003 1 session | |
| Total Forum Fees | = \$1,800.00 |

1. The Arbitrator has assessed 50% of the forum fees in the amount of \$900.00 solely to Claimant, Emily Buxbaum.
2. The Arbitrator has assessed 50% of the forum fees in the amount of \$900.00 jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Alan Taxman.

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Fee Summary

1. Claimant, Emily Buxbaum, is solely liable for:

| | |
|-------------------------------------|--------------|
| Initial Filing Fee | = \$ 175.00 |
| Forum Fees | = \$ 900.00 |
| Total Fees | = \$1,075.00 |
| Less payments | = \$ 625.00 |
| Balance Due NASD Dispute Resolution | = \$ 450.00 |

3. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. is solely liable for:

| | |
|-------------------------------------|--------------|
| Member Fees | = \$2,625.00 |
| Less payments | = \$2,375.00 |
| Balance Due NASD Dispute Resolution | = \$ 250.00 |

4. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Alan Taxman, are jointly and severally liable for:


| | |
|-------------------------------------|-------------|
| Forum Fees | = \$ 900.00 |
| Less Payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 900.00 |

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

ARBITRATION PANEL

Michael S. Hill Public Arbitrator, Presiding Chairperson

Concurring Arbitrators' Signature


Michael S. Hill
Public Arbitrator, Presiding Chairperson

10-30-03
Signature Date

Date of Service (For NASD Dispute Resolution use only)

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Michael S. Hill - Public Arbitrator, Presiding Chairperson

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