

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Marsha F. Smeltzer and Richard H. Smeltzer

and

Case Number: 02-06589
Hearing Site: Troy, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Christopher Johnston and
Henry Blodget

NATURE OF DISPUTE

Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

Marsha F. Smeltzer and Richard H. Smeltzer ("Claimants") were represented by Maranda E. Fritz, Esq., Maranda E. Fritz & Associates, New York, New York.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Christopher Johnston ("Johnston") were represented by Daniel S. Savrin, Esq. and Robert B. Baker, Esq., Bingham McCutchen, LLP, Boston, Massachusetts.

Henry Blodget ("Blodget") was represented by Joseph D. Edmondson, Jr., Esq., Foley & Lardner, Washington, D.C.

CASE INFORMATION

The Statement of Claim was filed on or about November 1, 2002. Clarification to the Statement of Claim was filed on or about November 8, 2002. The Submission Agreement of Claimants Marsha F. Smeltzer and Richard H. Smeltzer was signed on or about October 28, 2002.

Statement of Answer was filed jointly by Respondents MLPFS and Johnston on or about January 31, 2003. The Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about January 30, 2003, by Robert E. Goldberg, Director and Senior Counsel. The Submission Agreement of Respondent Christopher Johnston was signed on or about January 30, 2003.

Statement of Answer was filed by Respondent Henry Blodget on or about February 4, 2003. The Submission Agreement of Respondent Henry Blodget was signed on or about January 25, 2003.

Respondent Blodget filed a Motion to Dismiss on or about September 22, 2003. Claimants filed a Response to Motion on or about October 30, 2003. Respondent filed a Reply to Claimants' Response on or about November 4, 2003. Claimants filed a further submission in response to the Motion on or about November 4, 2003. Respondent Blodget filed a further submission in support of the Motion on or about November 5, 2003.

Respondents MLPFS and Johnston filed a Motion for Sanctions for the Claimants' Failure to Comply with the Chairperson's Discovery Orders. Claimants filed a Response to Motion on or about January 9, 2004.

CASE SUMMARY

Claimants asserted causes of action including the following: violation of Section 10(b) and Rule 10b-5 and breach of duty. The causes of action relate to Claimants' allegation that Respondent MLPFS engaged in a pattern of misconduct designed to induce its customers to purchase securities touted by the firm and to discourage its customers from selling those securities. Claimants asserted that Respondent Blodget issued biased research reports to assist MLPFS in developing its investment banking business and to increase his own compensation. Claimants' claims relate to the recommendation and purchase of securities including AOL, Nortel Networks, Sun Microsystems, Qual Comm, Nokia and Oracle.

Unless specifically admitted in their Answer, Respondents MLPFS and Johnston denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants fail to state a claim upon which relief can be granted; Claimants suffered no damages because of the acts of MLPFS or Johnston, the Statement of Claim is barred, in whole or in part, because Claimants failed to mitigate damages, if any; Claimants assumed the risk of these transactions and therefore may not recover; and to the extent that Claimants knew or were on notice of the transactions in their accounts and in fact authorized these transactions, they may not recover.

Unless specifically admitted in his Answer, Respondent Blodget denied the allegations made in the Statement of Claim and asserted affirmative and other defenses including the following: Claimants fail to state a claim upon which relief can be granted; Claimants' claims are barred because the risks inherent in the investments at issue were fully disclosed or known to Claimants and they assumed those risks; Claimants' claims are barred under the doctrine of contributory negligence because they negligently contributed to their own injury; MLPFS reports did not misrepresent or omit material facts; research analysts do not make "recommendations" or give "investment advice"; imperfection in a research opinion does not amount to a cause of action; Claimants did not rely on Blodget's statements; there was no privity between Claimants and Blodget; Blodget acted in good faith; and Blodget did not cause the alleged losses.

RELIEF REQUESTED

Claimants requested an award in excess of \$1 million dollars, plus punitive damages of approximately \$1,000,000.00, interest, costs, attorney fees, disbursements, and such other damages the panel deemed just and proper.

Respondents MLPFS and Johnston requested that the claims asserted against them be dismissed with prejudice in their entirety, that they be awarded their costs and attorneys' fees, and that this matter be expunged from Respondent Johnston's CRD record.

Respondent Blodget requested that the Statement of Claim be dismissed with prejudice, that he be awarded his attorneys' fees and costs, and that all references to the Statement of Claim be expunged from his CRD record.

OTHER ISSUES CONSIDERED & DECIDED

The panel deferred decision on Respondents' Motion for Sanctions in its order entered on April 1, 2004. The Motion is herein denied.

After oral arguments on Respondent Blodget's Motion to Dismiss, the panel denied Respondent Blodget's Motion to Dismiss without prejudice in its Order entered on November 12, 2003.

At hearing, Respondent Blodget moved to dismiss. The panel took the motion under advisement and it is herein denied.

All motions that have not previously been ruled on are herein denied.

On or about May 25, 2004, pursuant to Rule 10308 of the NASD Code of Arbitration Procedure, Arbitrator David L. Tornga was reclassified from a non-public to a public arbitrator. The parties accepted the composition of the Panel.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Respondent, Merrill Lynch Pierce Fenner & Smith, is solely liable for and shall pay to Claimants, Marsha F. Smeltzer and Richard H. Smeltzer, the sum of \$15,000.00 in compensatory damages;

- 2.) Claimants' claims, each and all, against Respondents Christopher Johnston and Henry Blodget are denied and dismissed with prejudice;
- 3.) Other than Forum Fees which are specified below, the parties shall each ~~bear their own costs and expenses incurred in this matter; and~~
- 4.) Any relief not specifically enumerated, including punitive damages, expungement, and attorney fees, is hereby denied with prejudice.

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 = \$ 500.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith.

Member surcharge = \$ 2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

January 27-29, 2004, adjournment by Respondent Blodget = \$ 1,200.00

Forum Fees and Assessments

The Arbitration 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) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: September 22, 2003 1 session
Five (5) Pre-hearing sessions with Panel x \$1,200.00 = \$ 6,000.00

Pre-hearing conferences:	September 9, 2003	1 session
	October 20, 2003	1 session
	November 10, 2003	1 session
	January 27, 2004	1 session
	March 31, 2004	1 session

Seven (7) Hearing sessions x \$1,200.00 = \$ 8,400.00

Hearing Dates:	May 4, 2004	2 sessions
	May 5, 2004	2 sessions
	May 6, 2004	2 sessions
	May 27, 2004	1 session

Total Forum Fees = \$14,850.00

The Arbitration Panel has assessed \$7,425.00 of the forum fees jointly and severally to Marsha F. Smeltzer and Richard H. Smeltzer.

The Arbitration Panel has assessed \$7,425.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith.

Fee Summary

Claimants, Marsha F. Smeltzer and Richard H. Smeltzer, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 7,425.00
Total Fees	= \$ 7,925.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 6,225.00

Respondent, Merrill Lynch Pierce Fenner & Smith, is liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 7,425.00
Total Fees	= \$15,975.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$12,425.00

Respondent, Henry Blodget, is liable for:

Adjournment Fees	= \$ 1,200.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 1,200.00
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

H. Rollin Allen, Esq. - Public Arbitrator, Presiding Chair :

~~Walter H. Clements, Esq. - Public Arbitrator~~

David L. Tornga, Esq. - Public Arbitrator

Concurring Arbitrators:

/s/ H. Rollin Allen, Esq.

H. Rollin Allen, Esq.
Public Arbitrator, Presiding Chair

06/04/04

Signature Date

/s/ Walter H. Clements, Esq.

Walter H. Clements, Esq.
Public Arbitrator

06/04/04

Signature Date

/s/ David L. Tornga, Esq.

David L. Tornga, Esq.
Public Arbitrator

06/04/04

Signature Date


06/04/04

Date of Service (For NASD office use only)

ARBITRATION PANEL

H. Rollin Allen, Esq. - Public Arbitrator, Presiding Chair
Walter H. Clements, Esq. - Public Arbitrator
David L. Tornga, Esq. - Public Arbitrator

Concurring Arbitrators:



H. Rollin Allen, Esq.
Public Arbitrator, Presiding Chair

6/04/04

Signature Date

Walter H. Clements, Esq.
Public Arbitrator

Signature Date

David L. Tornga, Esq.
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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NASD REGULATION

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ARBITRATION PANEL

H. Rollin Allen, Esq. - Public Arbitrator, Presiding Chair
Walter H. Clements, Esq. - Public Arbitrator
David L. Tornga, Esq. - Public Arbitrator

Concurring Arbitrators:

H. Rollin Allen, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Walter H. Clements, Esq.
Public Arbitrator

Signature Date


David L. Tornga, Esq.
Public Arbitrator

June 4, 2004
Signature Date

Date of Service (For NASD office use only)

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NASD REGULATION

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ARBITRATION PANEL

H. Rollin Allen, Esq. - Public Arbitrator, Presiding Chair
Walter H. Clements, Esq. - Public Arbitrator
David L. Tornga, Esq. - Public Arbitrator

Concurring Arbitrators:

H. Rollin Allen, Esq.
Public Arbitrator, Presiding Chair


Walter H. Clements, Esq.
Public Arbitrator

Signature Date

6-4-04
Signature Date

David L. Tornga, Esq.
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)