

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Joseph F. Hoedel

Case Number: 02-07405

Name of the Respondents

Merrill, Lynch, Pierce, Fenner & Smith

Hearing Site: St. Louis, Missouri

NATURE OF DISPUTE

Customer vs. Member Firm

REPRESENTATION OF PARTIES

Steven W. Koslovsky, Esq. of the Law Offices of Steven Koslovsky, LLP located in Maryland Heights, Missouri represented the Claimant, Joseph F. Hoedel, hereinafter referred to as "Claimant."

Elaine McChesney and James P. Lucking, Esq. of the law firm Bingham McCutchen, LLP, located in Boston, Massachusetts represented the Respondent, Merrill Lynch Pierce Fenner & Smith ("Merrill Lynch"), hereinafter referred to as "Respondent."

CASE INFORMATION

Statement of Claim filed on or about December 9, 2002. Claimant, Joseph F. Hoedel, signed the Uniform Submission Agreement on November 20, 2002.

Statement of Answer filed by Respondent, Merrill Lynch Pierce Fenner & Smith on or about March 10, 2003. Respondent, Merrill Lynch Pierce Fenner & Smith signed the Uniform Submission Agreement on January 10, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: fraud, misrepresentations, omission of facts, suitability and violation of SEC Act of 1934 and Missouri Securities Act and breach of fiduciary duty. The causes of action relate to stocks with Pets.com, Mypoints.com, Webvan Group, Investment Capital Group "ICG") and other stock investments. Claimant asserted that investments were high-risk and unsuitable to Claimant's needs and objectives.

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

1. Claimant fails to state a claim upon which relief can be granted.
2. Claimant suffered no damages by reason of any acts of Merrill Lynch.
3. Claimant failed to mitigate damages, if any, by failing to sell stock positions even as they continued to decline over the life of his accounts and by purchasing more.
4. Claimant assumed the risk of these transactions and therefore may not recover.
5. Claimant's alleged losses were proximately caused by his own conduct, negligence, comparative or contributory negligence in relation to the transactions complained of by him, and therefore, Claimant is precluded from recovery.
6. To the extent that Claimant knew or was on notice of the transactions in his accounts and in fact authorized these transactions, he may not recover.
7. Claimant's claims are barred by the applicable statutes of limitations.
8. Claimant's alleged claims are barred by the defenses of estoppel, waiver and laches.
9. Respondent is not liable to Claimant in any amount because, at all time relevant herein, it acted properly, in good faith and in a commercially reasonable manner with respect to Claimant's accounts.
10. All transactions upon which Claimant bases his alleged claims against Respondent were conducted in accordance with all applicable Exchange rules and regulations and in compliance with all applicable provisions of state and federal law.
11. Claimant is not entitled to any recovery because his alleged claims are barred by the equitable doctrine of unclean hands.
12. There is no legal basis for a damage claim based on the theory that an investor decided not to sell a stock based on the statement of another. Any claims based on the Claimant's decisions to hold any security must be dismissed.
13. Claimant's claims are barred because Respondent did not cause, legally, proximately or otherwise, his injuries.
14. Claimant is not entitled to an award of attorney's fees, punitive damages, interest of the costs of this proceeding.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$1,000,000.00
Punitive Damages	\$2,000,000.00

Respondent, Merrill Lynch requested that Claimant's Statement of Claim be dismissed with prejudice and that it be awarded costs.

OTHER ISSUES CONSIDERED AND DECIDED

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimant, Joseph F. Hoedel, are denied.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. 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	= \$ 500.00
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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 and is assessed the following fees:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 13-15, 2004, adjournment by the Claimant (Waived by the Panel)	= \$ 1,200.00
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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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$ 450.00	= \$ 1,350.00
Pre-hearing conferences:	
November 5, 2003	1 session
November 21, 2003	1 session
December 5, 2003	1 session
Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
August 5, 2003	1 session
December 23, 2003	1 session
Four (4) Hearing sessions @ \$1,200.00	= \$ 4,800.00
Hearing Dates:	
May 4, 2004	2 sessions
May 5, 2004	2 sessions
Total Forum Fees	= \$ 8,550.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$4,275.00 solely to Claimant Joseph F. Hoedel.
2. The Panel has assessed 50% of the total forum fees in the amount \$4,275.00 solely to Respondent, Merrill Lynch Pierce Fenner & Smith.

Fee Summary

1. Claimant, Joseph F. Hoedel, is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,275.00
Total Fees	= \$ 4,775.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,075.00

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

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 4,275.00
Total Fees	= \$12,825.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 4,275.00

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

ARBITRATION PANEL

Richard H. Potter	-	Public Arbitrator, Presiding Chairperson
Marilyn T. Selby, J.D.	-	Public Arbitrator
Marvin L. Frazier, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard H. Potter
Public Arbitrator, Presiding Chairperson

Signature Date

Marilyn T. Selby, J.D.
Public Arbitrator

Signature Date

Marvin L. Frazier, Jr.
Non-Public Arbitrator

Signature Date

5-13-04
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Concerning Arbitrators' Signatures

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 02-07405

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Richard H. Potter

- Public Arbitrator, Presiding Chairperson

Marilyn T. Selby, J.D.

- Public Arbitrator

Marvin L. Frazier, Jr.

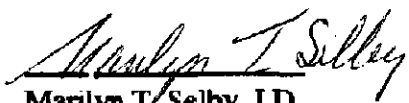
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard H. Potter

Signature Date

Public Arbitrator, Presiding Chairperson



Marilyn T. Selby, J.D.

5-10-04

Public Arbitrator

Signature Date

Marvin L. Frazier, Jr.

Signature Date

Non-Public Arbitrator

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ARBITRATION PANEL

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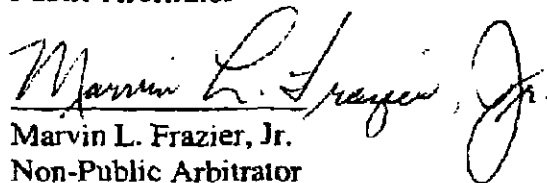
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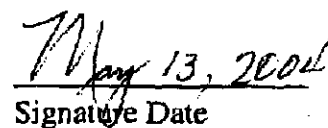
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