

RECEIVED

SEP 13 2005

PCX ARBITRATION

Stipulated Award
Pacific Exchange Arbitration

In the Matter of the Arbitration Between:

ROSEMARY MCCARTHY, Claimant v. MERRILL LYNCH, PIERCE, FENNER AND
SMITH INCORPORATED, JAMES BELOW And ARTHUR MATNEY, Respondents

Case Number: 02-S064

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Timothy A. Canning, Esq.
Richard Sacks
Novato, California

For Respondents:

Robert B. Ericson, Esq.
Todd A. Boock, Esq.
Bingham McCutchen LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: December 19, 2002.

Claimant's Uniform Submission Agreement signed: November 25, 2002.

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner and Smith
Incorporated ("Merrill Lynch") and James Below: March 20, 2003.

Respondent James Below's Uniform Submission Agreement signed: February 26, 2004.

CASE SUMMARY

Claimant's Statement of Claim complains of transactions effected in Claimant's accounts by
Mr. Below, a representative of Merrill Lynch, and alleges that Respondents are liable to
Claimant for the losses sustained in Claimant's Merrill Lynch accounts. Claimant also alleged
that this dispute involves investments in technology stocks.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim
and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested actual damages in the amount of "no less than" \$300,000.00. Claimant also sought punitive damages and reimbursement for costs and fees incurred in bringing this arbitration.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety and "such other, further and different relief" as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On July 16, 2003, Claimant 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 February 19, 2004, Respondents' 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 July 7, 2005, Claimant dismissed Respondent Arthur Matney with prejudice.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

STIPULATED DEMAND AND RECOMMENDATION OF EXPUNGEMENT

The parties hereby stipulate that all claims asserted by Claimant against Respondents have been resolved. The parties further stipulate that they will split any outstanding forum fees.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James Below's registration record maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent James Below must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

AWARD

After considering the preceding Stipulation of the parties, the Panel has decided in full and final resolution of the issues submitted for determination, as follows:

1. The Panel notes the parties' stipulation that all claims asserted by the Claimant against the Respondents have been resolved.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James Below's registration record maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent James Below must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its own costs, including attorney's fees.
4. Pursuant to the parties' stipulation, all outstanding forum fees shall be split equally.
5. All other relief not expressly granted is denied.

FEES

Pursuant to the Pacific Exchange Arbitration Rules, the following fees are assessed:

Adjournment Fee

The Panel assessed a last-minute adjournment fee on the parties.

Total Adjournment Fee **= \$ 300**

1. The Panel assessed \$150 of the adjournment fee to Claimant.
2. The Panel assessed \$150 of the adjournment fee jointly and severally to Respondents.

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 Chair or the parties and the Panel. The following fees are assessed:

2 Pre-hearing conference session(s) with the Panel @ \$ 1,000/session	= \$ 2,000
Pre-hearing conference: December 17, 2004 1 session	
Pre-hearing conference: April 8, 2005 1 session	

Total Forum Fees **= \$ 2,000**

1. The Panel assessed \$1,000 of the forum fees to Claimant.
2. The Panel assessed \$1,000 of the forum fees jointly and severally to Respondents.

Fee Summary

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

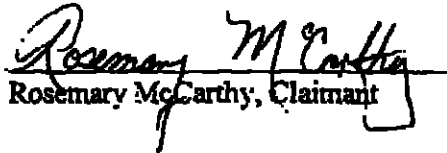
Adjournment Fee	= \$ 150
<u>Forum Fees</u>	<u>= \$ 1,000</u>
<u>Less payments</u>	<u>= \$ (1,000)</u>
Balance Due Pacific Exchange	= \$ 150

2. Respondents Merrill Lynch, Pierce, Fenner and Smith Inc. and James Below are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 150
<u>Forum Fees</u>	<u>= \$ 1,000</u>
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due Pacific Exchange	= \$ 1,150

All balances are payable to Pacific Exchange and are due upon the receipt of the Award pursuant to Pacific Exchange Rule 12.31.

PARTIES' SIGNATURES



Rosemary McCarthy, Claimant

8-2-05

Signature Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Respondent

Signature Date

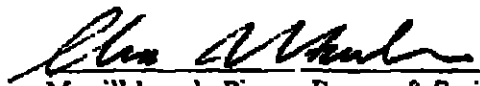
James Below, Respondent

Signature Date


PARTIES' SIGNATURES

Rosemary McCarthy, Claimant

Signature Date



Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Respondent



Signature Date

James Below, Respondent

Signature Date

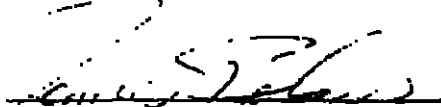
PARTIES' SIGNATURES

Rosemary McCarthy, Claimant

Signature Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Respondent

Signature Date



James Below, Respondent



Signature Date

McCarthy
PCX Arbitration
Arbitration No. 02-S064
Stipulated Award Page 7 of 7

RECEIVED
SEP 26 2005
PCX ARBITRATION

ARBITRATION PANEL

John Kelly, Esq.	-	Public Arbitrator, Presiding Chair
Leba Wine, Esq.	-	Public Arbitrator
Jane Gundermann	-	Industry Arbitrator

Concurring Arbitrators' Signatures

John P. Kelly

John Kelly, Esq.
Chair, Public Arbitrator

Sept. 23, 2005

Signature Date

Leba Wine, Esq.
Public Arbitrator

Signature Date

Jane Gundermann
Industry Arbitrator

Signature Date

Date of Service

RECEIVED
SEP 20 2005
PCX ARBITRATION

ARBITRATION PANEL

John Kelly, Esq.	-	Public Arbitrator, Presiding Chair
Leba Wine, Esq.	-	Public Arbitrator
Jane Gundermann	-	Industry Arbitrator

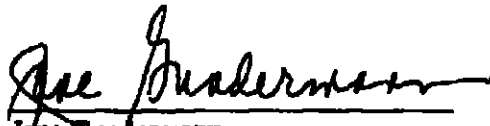
Concurring Arbitrators' Signatures

John Kelly, Esq.
Chair, Public Arbitrator

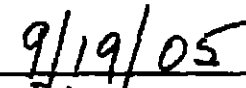
Signature Date

Leba Wine, Esq.
Public Arbitrator

Signature Date



Jane Gundermann
Industry Arbitrator



Signature Date

Date of Service