

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Robert Burns

v.

03-00389

Minneapolis, Minnesota

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and John P. Horan

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Robert Burns ("Claimant") was represented by Matthew T. Boos, Esq., of Fredrickson & Byron, P.A., Minneapolis, Minnesota.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and John P. Horan ("Horan"), hereinafter referred to as ("Respondents"), were represented by Robert B. Baker, Esq., of Bingham McCutchen, LLP, Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about January 15, 2003. Submission Agreement of Claimant was signed on or about January 13, 2003.

A Joint Statement of Answer was filed by Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and John P. Horan on or about April 7, 2003. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about February 19, 2003. Submission Agreement of Respondent John P. Horan was signed on or about April 8, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of fiduciary duty, federal securities fraud, violations of Minnesota state securities laws, common law fraud, negligence, failure to supervise and respondeat superior. The causes of action related to Claimant's allegation that Respondents failed to disclose numerous conflicts of interest, through fraudulent research reports and oral misrepresentation, when they recommended the purchase of common stock in Global Crossing Inc. Claimant asserted that he relied on these reports and Respondent Horan's assurances that the stocks prices would improve and held onto the stocks.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant's alleged losses were proximately caused by his own conduct, negligence, and comparative or contributory negligence, and therefore, is precluded from recovery; all risks inherent were fully disclosed and/or known to Claimant and any losses incurred by Claimant were the direct result of adverse economic market conditions and/or the acts of third parties and cannot be attributed to Respondents; Claimant directed, approved and/or authorized each and every transaction for his accounts and/or ratified, accepted, acquiesced and confirmed in all respects such transactions, and as such Claimant's claims are barred by the equitable doctrines of estoppel, laches, ratification and waiver; and at all relevant times Merrill Lynch maintained an adequate and reasonable strategy of supervision and control over its employees.

RELIEF REQUESTED

Claimant requested an award of \$425,000 in compensatory damages, plus attorney's fees, interest, costs, punitive damages of at least \$250,000 and such other relief that the Panel deemed just and fair.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Respondent Horan's permanent registration record maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of Claimant's case, Respondents orally moved to dismiss Claimant's claims. Claimant agreed to withdraw "the fraud claim based upon relying on research reports" and "the tax claim" with prejudice. The Panel accepted the withdrawal, and denied Respondents' motion as to the other claims.

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 originals 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. Claimant's claims, each and all, are hereby denied and dismissed with prejudice in their entirety;

2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and expungement, are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 375

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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	= \$ 2,250
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 4,000

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: 08/08/2003 1 session

Five (5) Hearing sessions with Panel x \$ 1,200 = \$ 6,000

Hearing Dates:	03/23/2004	2 sessions
	03/24/2004	2 sessions

03/25/2004

1 session

Total Forum Fees = \$ 7,200

The Arbitration Panel has assessed \$ 3,600 of the forum fees to Robert Burns

The Arbitration Panel has assessed \$ 3,600 of the forum fees jointly and severally to Merrill Lynch
Pierce Fenner & Smith, Inc. and John P. Horan.

Fee Summary

Claimant, Robert Burns is liable for:

Initial Filing Fee	= \$ 375
<u>Forum Fees</u>	= \$ 3,600
<u>Total Fees</u>	= \$ 3,975
<u>Less payments</u>	= \$ 1,575
Balance Due NASD Dispute Resolution	= \$ 2,400

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

Member Fees	= \$ 7,000
<u>Total Fees</u>	= \$ 7,000
<u>Less payments</u>	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and John P. Horan are jointly and severally
liable for:

<u>Forum Fees</u>	= \$ 3,600
<u>Total Fees</u>	= \$ 3,600
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 3,600

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

ARBITRATION PANEL

Michael Keith Jordan, J.D. - Public Arbitrator, Presiding Chair
Harry J. Haynsworth, J.D. - Public Arbitrator
Annette W. Minor, Esq.- Non-Public Arbitrator

Concurring Arbitrators:

Michael Keith Jordan, J.D.
Public Arbitrator, Presiding Chair

Signature Date

Harry J. Haynsworth, J.D.
Public Arbitrator

Signature Date

Annette W. Minor, Esq.
Non-Public Arbitrator

Signature Date

4/5/04
Date of Service (NASD use only)

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Harry J. Haynsworth, J.D. - Public Arbitrator
Annette W. Minor, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Michael K. Jordan
Michael Keith Jordan, J.D.
Public Arbitrator, Presiding Chair

4/1/04
Signature Date

Harry J. Haynsworth, J.D.
Public Arbitrator

Signature Date

Annette W. Minor, Esq.
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