

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Alan W. Heldman

Case Number: 03-00774

Names of the Respondents
Merrill Lynch, Pierce,
Fenner & Smith, Inc.
David Lesser
Michael Torre
Joel Berlly

Hearing Site: Atlanta, Georgia

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

REPRESENTATION OF PARTIES

For Alan W. Heldman, hereinafter referred to as "Claimant": Lange Clark, Esq., Birmingham, Alabama and Thomas L. Krebs, Esq., Haskell Slaughter Young & Rediker, LLC, Birmingham, Alabama.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), David Lesser ("Lesser") and Joel Berlly ("Berlly"): Terry R. Weiss, Esq. and Daniel Boland, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

Respondent Michael Torre ("Torre") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: January 31, 2003.

Amended Statement of Claim filed on or about: April 18, 2003.

Claimant signed the Uniform Submission Agreement: January 31, 2003.

Statement of Answer filed by Respondent Merrill on or about: May 30, 2003.

Respondent Merrill signed the Uniform Submission Agreement: February 24, 2003.

Respondents Torre, Lesser and Berlly did not file Statements of Answers.

Respondents Torre, Lesser and Berlly did not file executed Uniform Submission Agreements.

Respondent Merrill's Motion for Sanctions filed on or about: April 22, 2004.

Respondent Merrill's Supplemental Motion for Sanctions filed on or about: April 22, 2004.

Claimant's Response to Respondent's Motion for Sanctions and Supplemental Motion for Sanctions and Cross Motion for Sanctions filed on or about: April 26, 2004.

Respondent Merrill's Reply Brief in Support of its Motion for Sanctions filed on or about: April 30, 2004.

Respondent Merrill's Motion to Exclude the Dinallo Affidavit and all References to any Settlement Agreement Between Merrill Lynch and the State of Texas ("Motion to Exclude") filed on or about: May 6, 2004.

Claimant's Motion to Strike filed on or about: May 7, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: fraud, misrepresentations, or omissions in connection with the purchase or sale of securities in violation of Sections 8-6-17 and 8-6-19 of the Alabama Securities Act; fraud under Alabama Code Section 6-5-100; common law fraud; breach of fiduciary duty; failure to supervise; negligence; and, wantonness. The causes of action relate to Claimant's investments in shares of stock of Adobe Systems, Amazon.com, CMGI, Cisco, Cypress Semiconductor, Exodus, Flexionics, JDS Uniphase, Oracle, Qualcomm, Sun Micro Systems and Veritas Software.

Unless specifically admitted in its Answer, Respondent Merrill denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

At the conclusion of the evidentiary hearing, Claimant requested the total losses of \$170,641.00, interest at 6% of \$33,267.00 (per Alabama Code Section 8-16-19(a)) and expenses and attorneys' fees per Alabama Code as follows: attorneys' fees of \$51,173.00, office expenses of \$12,500.00, NASD filing fee of \$1,450.00, and travel and miscellaneous fees of \$6,500.00. In addition, in the Amended Statement of Claim, Claimant requested ten times the amount of Claimant's actual damages and three times the decline in the value of Claimant's portfolio plus interest, in punitive damages.

Respondent Merrill requested that the Panel reject Claimant's Amended Statement of Claim in its entirety and order that all costs of this arbitration be borne by Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Lesser, Torre and Berlly did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, are bound by the determination of the Panel on all issues submitted.

On or about April 18, 2003, Claimant filed with NASD Dispute Resolution a Dismissal of Respondents David Lesser, Joel Berlly and Michael Torre Without Prejudice and requested and consented to having all references to the filing of this matter expunged from the Central Registration Depository ("CRD") records of Respondents Lesser and Berlly.

During the evidentiary hearing, the arbitration panel issued orders which denied Claimant's and Respondent Merrill's Motion for Sanctions, granted Respondent's Motion to Exclude and denied Claimant's Motion to Strike.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

All claims are denied.

Each party shall bear their respective costs and attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

Respondent Merrill is liable and shall pay to Claimant the sum of \$250.00 representing reimbursement of one-half of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Lesser, Torre and Berlly's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Lesser, Torre and Berlly must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

FEEES

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

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:

No requests for adjournments for which fees were assessed were granted in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Pre-hearing session with a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: April 19, 2004 1 session	

One Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: September 23, 2003 1 session	

Eight Hearing sessions @ \$1,200.00	= \$9,600.00
Hearing Dates: May 11, 2004 2 sessions	
May 12, 2004 2 sessions	
May 13, 2004 2 sessions	
May 14, 2004 2 sessions	

Total Forum Fees	= \$11,250.00
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The Panel has assessed \$5,625.00 of the forum fees to Claimant.

The Panel has assessed \$5,625.00 of the forum fees to Respondent Merrill.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee	= \$500.00
Forum Fees	= \$5,625.00

Total Fees	= \$6,125.00
Less payments	= \$1,700.00

Balance Due NASD Dispute Resolution	= \$4,425.00
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Respondent Merrill is solely liable for:

Member Fees	= \$8,550.00
Forum Fees	= \$5,625.00

Total Fees	= \$14,175.00
Less payments	= \$8,550.00

Balance Due NASD Dispute Resolution	= \$5,625.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Harriet H. Harris, Esq.	-	Public Arbitrator, Presiding Chair
William Austin Dealy, Jr.	-	Public Arbitrator
Perry Lee Taylor, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/_____
Harriet H. Harris, Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/S/_____
William Austin Dealy, Jr.
Public Arbitrator

Signature Date

_____/S/_____
Perry Lee Taylor, Jr., Esq.
Non-Public Arbitrator

Signature Date

May 20, 2004
Date of Service (For NASD Dispute Resolution office use only)

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Total Fees	= \$6,125.00
Less payments	= \$1,700.00

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Perry Lee Taylor, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Harriet H. Harris
Harriet H. Harris, Esq.
Public Arbitrator, Presiding Chair

5/19/04
Signature Date

William Austin Dealy, Jr.
William Austin Dealy, Jr.
Public Arbitrator

Signature Date

Perry Lee Taylor, Jr., Esq.
Perry Lee Taylor, Jr., Esq.
Non-Public Arbitrator

Signature Date

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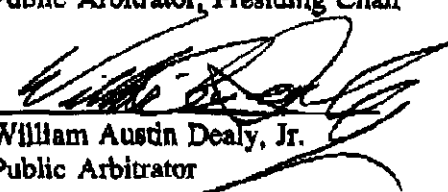
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Public Arbitrator, Presiding Chair

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Less payments	= \$1,700.00
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Balance Due NASD Dispute Resolution	= \$4,425.00

Respondent Merrill is solely liable for:

Member Fees	= \$8,550.00
Forum Fees	= \$3,625.00

Total Fees	= \$14,175.00
Less payments	= \$8,550.00
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Perry Lee Taylor, Jr., Esq.	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Harriet H. Harris, Esq.
Public Arbitrator, Presiding Chair

Signature Date

William Austin Dealy, Jr.
Public Arbitrator

Signature Date



Perry Lee Taylor, Jr., Esq.
Non-Public Arbitrator

Signature Date

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