

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Michael W. Martin

Case Number: 03-01189

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith Inc.
John Pierce, Jr.
James Graham, Jr.

Hearing Site: Philadelphia, Pennsylvania

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

REPRESENTATION OF PARTIES

Claimant, Michael W. Martin, hereinafter referred to as "Claimant", was represented by Noah H. Charlson, Esq., Bazelon, Less, & Feldman PC, Philadelphia, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc., ("Merrill Lynch"), John Pierce, Jr. ("Pierce"), and James Graham, Jr. ("Graham"), hereinafter referred to as "Respondents", were represented by Thomas L. Weisenbeck, Esq., Bressler Amery & Ross, PC, Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed on February 18, 2003.

Claimant signed the Uniform Submission Agreement on February 13, 2003.

Statement of Answer filed by Respondents on May 2, 2003.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on June 18, 2003.

Respondent Pierce signed the Uniform Submission Agreement on June 22, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: unsuitability, inadequate supervision, fraud, and violating the Pennsylvania Unfair Trade Practices and Consumer Protection law. The causes of action relate to the purchase of unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief can be granted, statute of limitations, failure to mitigate, ratification, laches, and estoppel.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested \$112,000 in compensatory damages, interest, treble damages, attorneys' fees, and costs.

In their Statement of Answer, Respondents requested that the Statement of Claim be dismissed in its entirety and that an Order be entered directing the expungement of any reference to these matters from Respondents Pierce and Graham's records maintained at NASD's Central Registration Depository ("CRD"). Additionally, Respondents requested that attorneys' fees, costs, and forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 1, 2004, the parties agreed to a settlement and requested that the Arbitration Panel (the "Panel") enter a Stipulated Award in this matter.

Respondent Graham did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the Panel on all issues submitted.

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 parties' agreement, and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed to settle this matter. Claimant withdraws all claims against all Respondents with prejudice, and therefore this action is dismissed as to all Respondents.
2. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Pierce's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Pierce must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and

4. Any and all relief not specifically addressed herein, including treble damages, is denied in its entirety.

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 = \$ 300.00

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 person(s) at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

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 (1) Pre-hearing session with Panel @ \$1,125 = \$1,125.00

Pre-hearing conference: January 21, 2004 1 session

Total Forum Fees = \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees to Claimant.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 562.50

Total Fees = \$ 862.50

Less payments = \$1,425.00

Refund owed to Claimant = \$ 562.50

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$.00

3. Respondents are jointly and severally assessed and shall pay the following fees:


<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 562.50

All balances are payable to NASD Dispute Resolution

ARBITRATION PANEL

James P. O'Donnell	-	Public Arbitrator, Panelist
James Kenneth Fruehling	-	Public Arbitrator, Panelist
David Denison	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


James P. O'Donnell
Public Arbitrator

11/24/04
Signature Date

James Kenneth Fruchling
Public Arbitrator, Panelist

Signature Date

David Denison
Non-Public Arbitrator, Panelist

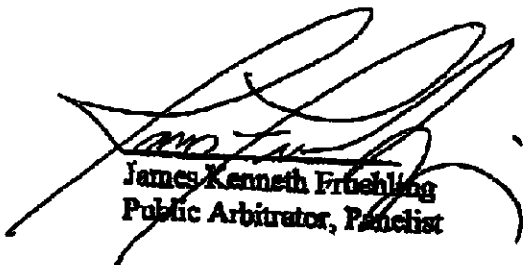
Signature Date

December 2, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

James P. O'Donnell
Public Arbitrator

Signature Date


James Kenneth Fruehling
Public Arbitrator, Panelist

11/18/04
Signature Date

David Denison
Non-Public Arbitrator, Panelist

Signature Date

December 2, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

James P. O'Donnell
Public Arbitrator

Signature Date

James Kenneth Fruehling
Public Arbitrator, Panelist

Signature Date

David Denison
David Denison
Non-Public Arbitrator, Panelist

11/25/04
Signature Date

December 2, 2004
Date of Service (For NASD Dispute Resolution office use only)