

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Fadi Daouk, Rendo Daouk, and
Prairie Development West LLC

and

Case Number: 03-01499
Hearing Site: Troy, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
and Daniel E. Totonchi

NATURE OF DISPUTE

Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

Fadi Daouk, Rendo Daouk, and Prairie Development West LLC ("Claimants") were represented by William J. Lamping, Esq., Vestevich, Mallender, Dubois & Dritsas, Bloomfield Hills, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc., ("MLPFS") and Daniel E. Totonchi ("Totonchi"), hereinafter referred to as "Respondents," were represented by Clarence Pozza, Esq., and W. Scott Turnbull, Esq., Miller, Canfield, Paddock and Stone, P.L.C., Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about March 3, 2003. The Submission Agreement of Claimants, Fadi Daouk and Rendo Daouk, was signed on or about December 13, 2002. The Submission Agreement of Prairie Development West LLC was signed on or about March 19, 2003, by F. Daouk.

The Statement of Answer was filed jointly by Respondents, MLPFS and Totonchi, on or about October 7, 2003. The Submission Agreement of Respondent, MLPFS, was signed on or about April 24, 2002. The Submission Agreement of Respondent, Totonchi, was signed on or about October 14, 2003.

CASE SUMMARY

Claimants asserted the following cause of action: delay in executing sell orders. The causes of action relate to Claimants' allegations that Totonchi failed to follow Claimants' sell orders in a timely manner, which failure resulted in a decline in value of the seventeen unspecified option positions.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by reason of the applicable statute of limitation; and the Statement of Claim is barred by reason of Claimants' negligence; comparative negligence and contributory negligence.

RELIEF REQUESTED

Claimants requested an award in the amount of \$317,137.50, plus punitive damages of \$100,000.00, interest, attorneys' fees, forum fees, costs and any other case-related expenses.

Respondents requested that the claims asserted against them be dismissed in their entirety, that the panel expunge all references to this claim from Totonchi's CRD record, and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the close of Claimants' case in chief, Respondents moved for a directed verdict. The panel took the motion under advisement. The panel denies the motion herein.

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 original(s) 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.) Claimants' claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel E. Totonchi's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Totonchi must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 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 = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

September 21-22, 2004, and October 20-21, 2004,
adjournments requested by Claimants = \$ 1,125.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

The request to adjourn the September 21-22, 2004, and October 20-21, 2004, hearing dates was made by Claimants at the hearing on September 20, 2004 = \$ 300.00

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 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 20, 2004	1 session
Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conference: November 12, 2003	1 session
October 18, 2004	1 session
Five (5) Hearing sessions x \$1,125.00	= \$ 5,625.00
Hearing Dates: September 20, 2004	1 session
November 11, 2004	2 sessions
November 12, 2004	2 sessions
Total Forum Fees	= \$ 8,325.00

The Arbitration Panel has assessed \$4,162.50 of the forum fees, jointly and severally, to Fadi Daouk, Rendo Daouk, and Prairie Development West LLC.

The Arbitration Panel has assessed \$4,162.50 of the forum fees, jointly and severally, to Merrill Lynch Pierce Fenner & Smith, Inc., and Daniel E. Totonchi.

FEE SUMMARY

Claimant, Fadi Daouk, Rendo Daouk, and Prairie Development West LLC, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$ 1,125.00
Three-Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$ 4,162.50
Total Fees	= \$ 5,887.50
Less payments	= \$ 1,500.00
Balance Due NASD Dispute Resolution	= \$ 4,387.50

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

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Daniel E. Totonchi, are jointly and severally liable for:

Forum Fees	= \$ 4,162.50
Total Fees	= \$ 4,162.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,162.50

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

ARBITRATION PANEL

Joseph J. Burtell, Esq. - Public Arbitrator, Presiding Chair
Richard J. Rankin, Esq. - Public Arbitrator
Bruce F. Coleman - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Joseph J. Burtell, Esq.
Joseph J. Burtell, Esq.
Public Arbitrator, Presiding Chair

11/12/04
Signature Date

/s/ Richard J. Rankin, Esq.
Richard J. Rankin, Esq.
Public Arbitrator

11/12/04
Signature Date

/s/ Bruce F. Coleman
Bruce F. Coleman
Non-Public Arbitrator

11/15/04
Signature Date

11/15/04
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Joseph J. Burtell, Esq.
Public Arbitrator, Presiding Chair

11/12/07
Signature Date

Richard J. Rankin, Esq.
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Public Arbitrator

Signature Date

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