

**Stipulated Award
NASD Dispute Resolution**

COPY

In the Matter of the Arbitration Between:

John F. McKenzie, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Donald K. Bell and Steven A. Rocha, Respondents

Case Number: 03-01529

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Mitchell S. Ostwald, Esq.
Law Offices of Mitchell S. Ostwald
Sacramento, California

For Respondents:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud
San Francisco, California

CASE INFORMATION

Statement of Claim filed: March 4, 2003

Claimant's Uniform Submission Agreement signed: February 25, 2003

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Donald K. Bell and Steven A. Rocha: May 27, 2003

Respondent Merrill Lynch's Uniform Submission Agreement signed: May 1, 2003

Respondent Donald K. Bell's Uniform Submission Agreement signed: July 3, 2003

Respondent Steven A. Rocha's Uniform Submission Agreement signed: June 16, 2003

CASE SUMMARY

Claimant alleged that the above referenced dispute involves investments in various stocks, including but not limited to investments in Nortel Networks. Claimant also alleged the following claims: 1) Breach of Fiduciary Duty; 2) Fraud; 3) Constructive Fraud (Civil Code Section 1573); 4) Failure to Supervise; 5) Elder Abuse; 6) Unfair or Deceptive Practices Against Senior

Citizens; and 7) Violation of Federal and State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

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

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in an amount according to proof, but not less than \$840,000.00
2. Disgorgement and restitution of all earnings, profits, compensation and benefits received by the Respondents as a result of their unlawful acts and practices in an amount according to proof;
3. Lost opportunity cost of what the gain from \$840,000.00 would have been if suitably invested;
4. Attorney's fees and costs;
5. Pre- and post judgment interest at the legal rate;
6. Punitive damages in an amount according to proof; and
7. Such other and further relief as the Panel may deem just and proper.

Respondents requested:

1. Dismissal of Claimant's claims;
2. Attorneys' fees and costs; and
3. Such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On March 27, 2003, Claimant and Claimant's 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.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

STIPULATION

By and through their counsel of record, Claimant John F. McKenzie ("Claimant") and Respondents Merrill Lynch, Donald K. Bell and Steven A. Rocha ("Respondents") agree and stipulate as follows:

A. Claimant has brought certain claims against Respondents before NASD Dispute Resolution ("NASD-DR") for arbitration and resolution, and that matter was assigned Claim No. 03-01529.

B. Merrill Lynch, Bell and Rocha have denied and continue to deny all material allegations of Claimant's claims.

C. Claimant and Merrill Lynch have entered into a Confidential Settlement Agreement and General Release ("the Settlement Agreement") regarding Claimant's claims against Respondents.

D. Pursuant to the Settlement Agreement, Claimant has agreed to dismiss these proceedings with prejudice.

E. Respondents contend that the claims against Mr. Bell and Mr. Rocha were without factual basis, and on that basis seek an order recommending that this matter be expunged from the records of Mr. Bell and Mr. Rocha maintained by the NASD in its Central Registration Depository ("CRD").

F. As part of the settlement, Claimant has agreed not to oppose Respondents' request that a stipulated award be entered, recommending that all references to this matter be expunged from Mr. Bell's and Mr. Rocha's CRD records.

WHEREFORE, the parties hereby stipulate to, and seek the arbitrators' approval of, the following award:

1. The arbitration denominated John F. McKenzie v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Donald K. Bell and Steven A. Rocha, NASD Case No. 03-01529, is dismissed in its entirety with prejudice upon Merrill Lynch fulfilling its obligations pursuant to the confidential Settlement Agreement.

2. The arbitrators recommend and direct that all references to the complaints of the Claimant or the claim filed by him be expunged from the records of Respondents Donald K. Bell and Steven A. Rocha maintained by the NASD in its Central Registration Depository ("CRD"), with the understanding that, pursuant to NASD Notice to Members 99-09, NASD Regulation will not execute the expungement directive until the arbitration award is confirmed by a court of

competent jurisdiction.

3. Merrill Lynch shall bear any additional costs or fees charged by the NASD in connection with any proceedings that occur in connection with this Stipulation or otherwise occur in connection with Merrill Lynch's effort to obtain expungement of this matter from Mr. Bell's and Mr. Rocha's CRD records.

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 arbitration claim is dismissed with prejudice against all Respondents.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Donald K. Bell and Steven A. Rocha's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Donald K. Bell and Steven A. Rocha 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. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$375.00
--------------------------	------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$4,000.00
Total Member Fees	= \$7,000.00

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/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: December 10, 2003	1 session
December 16, 2004	1 session

Total Forum Fees	= \$2,400.00
-------------------------	---------------------

The Panel assessed \$600.00 of the forum fees to Claimant.

The Panel assessed \$1,800.00 of the forum fees to Respondent Merrill Lynch.

Fee Summary

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

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less Payments	= \$ (1,575.00)
Refund Due Claimant	= \$ (600.00)

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 1,800.00
Total Fees	= \$ 8,800.00
Less Payments	= \$ (7,000.00)
Balance Due NASD-DR	= \$ 1,800.00

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

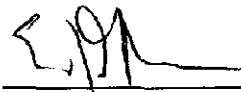
Parties' Counsel's Signatures

DATED: 1-21-05



Mitchell S. Ostwald
Law Offices of Mitchell S. Ostwald
Attorneys for Claimant John F. McKenzie

DATED: 1-25-05



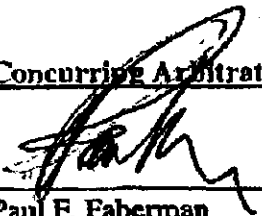
Eric J. Glassman
Mennemeier, Glassman & Stroud LLP
Attorneys for Respondents Merrill Lynch, Pierce,
Fenner & Smith, Inc., Donald K. Bell and Steven
A. Rocha

ARBITRATION PANEL

Paul F. Faberman
Mac T. Finley
Herbert L. Brown

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Paul F. Faberman
Chair, Public Arbitrator



Signature Date

Mac T. Finley
Public Arbitrator

Signature Date

Herbert L. Brown
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

Paul F. Faberman	-	Public Arbitrator, Presiding Chair
Mac T. Finley	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul F. Faberman
Chair, Public Arbitrator

Signature Date

Mac T. Finley
Public Arbitrator

Mac T. Finley
Signature Date

Herbert L. Brown
Non-Public Arbitrator

Signature Date

3/21/05
Date of Service

ARBITRATION PANEL

Paul F. Faberman	-	Public Arbitrator, Presiding Chair
Mac T. Finley	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Paul F. Faberman
Chair, Public Arbitrator

Signature Date

Mac T. Finley
Public Arbitrator

Signature Date



Herbert L. Brown
Non-Public Arbitrator

2-28-05
Signature Date

3/21/05
Date of Service