

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Claimant v. Donald G. Cox, Jr.,
Respondent

Case Number: 03-01602

Hearing Site: Las Vegas, Nevada

Nature of the Dispute: Member v. Customer

REPRESENTATION OF PARTIES

For Claimant:

Laura Ellen Browning, Esq.
Haney Woloson & Mullins
Las Vegas, Nevada

For Respondent:

Gex F. Richardson, Esq.
Gex F. Richardson, P.A.
Fort Lauderdale, Florida

CASE INFORMATION

Statement of Claim filed: March 4, 2003

Claimant's Uniform Submission Agreement signed: July 10, 2002

Statement of Answer filed by Respondent Donald G. Cox, Jr.: April 29, 2003

Respondent Donald G. Cox, Jr.'s Uniform Submission Agreement signed: April 7, 2003

CASE SUMMARY

Claimant alleged breach of contract for a debit balance owed. Claimant's allegations involved the purchase of technology stocks in Respondent's margin account.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested \$131,999.64 in compensatory damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Donald G. Cox signed a Uniform Submission Agreement on April 7, 2003 and filed a Statement of Answer on April 29, 2003. By letter dated August 27, 2003, Claimant and Respondent received notice of the initial pre-hearing conference call in this matter. By letter dated October 8, 2003, Claimant and Respondent received a copy of the initial pre-hearing conference scheduling order confirming the evidentiary hearing dates of December 16-18, 2003, which had been agreed to by the parties and by the arbitration panel at the initial pre-hearing conference.

In a letter to NASD dated December 2, 2003, Respondent stated that he had terminated his relationship with his attorneys and requested an adjournment of the arbitration hearing so that he might retain new counsel. On December 3, 2003, Claimant submitted to NASD an opposition to Respondent's request for an adjournment. On December 5, 2003, the arbitration panel granted Respondent's request. The evidentiary hearing was rescheduled to June 4, 2004 and June 7, 2004, which dates were confirmed in an April 6, 2004 letter from NASD to the parties and to the arbitration panel.

On April 23, 2004, NASD received a notice of appearance from Respondent's current counsel on behalf of Respondent. On June 3, 2004, the parties submitted a stipulated request for adjournment of the June 2004 hearing dates, which was granted by the arbitration panel. On October 25, 2004, the parties and the arbitration panel participated in a pre-hearing conference call to set new hearing dates; January 11-12, 2005 were agreed upon as the new hearing dates. On October 25, 2004, NASD sent a letter to the parties and to the arbitration panel confirming the January 2005 hearing dates.

On January 7, 2005, NASD was advised that one of the arbitrators had a conflict with the January 2005 hearing dates. NASD notified the parties of this situation, and on January 10, 2005, NASD received a letter from the parties stating that they had agreed to continue the January 2005 hearing and to have a pre-hearing conference call on January 11, 2005 to set new hearing dates. On January 11, 2005, the pre-hearing conference call took place, and evidentiary hearing dates of February 16-17, 2005 were agreed to by the parties and by the arbitration panel. In a letter to the parties and to the arbitration panel dated January 13, 2005, NASD confirmed the February 16-17, 2005 hearing dates and provided notice of the hearing location.

Upon review of the file and the representations made on behalf of Claimant, the undersigned Panel determined that Respondent Donald G. Cox, Jr. was properly served with the Statement of Claim and received due notice of the hearing and that arbitration of this matter would proceed without said Respondent present, in accordance with NASD's Code of Arbitration Procedure (the "Code").

The Panel 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Donald G. Cox, Jr. is liable to and shall pay Claimant Merrill Lynch, Pierce, Fenner & Smith, Incorporated the sum of \$127,761.00 in compensatory damages.
- 2) Respondent Donald G. Cox, Jr. is liable to and shall pay Claimant Merrill Lynch, Pierce, Fenner & Smith, Incorporated the sum of \$1,697.60 as reimbursement for attorney costs.
- 3) Respondent Donald G. Cox, Jr. is liable to and shall pay Claimant Merrill Lynch, Pierce, Fenner & Smith, Incorporated the sum of \$37,260.85 in attorney's fees, pursuant to the terms of Respondent Donald G. Cox's customer agreement with Claimant Merrill Lynch, Pierce, Fenner & Smith, Incorporated.
- 4) Respondent Donald G. Cox, Jr. is liable to and shall pay Claimant Merrill Lynch, Pierce, Fenner & Smith, Incorporated interest in the amount of \$48,895.71 on \$127,761.00 from April 14, 2000 until the date that payment of this Award is made in full.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1,000.00
--------------------------	--------------

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, Pierce, Fenner & Smith, Incorporated is a party, and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Adjournment Fees

The following adjournment fees are assessed:

December 16-18, 2003, adjournment requested by Respondent	= \$ 1,125.00
June 4, 2004 and June 7, 2004, adjournment requested by Claimant and Respondent	= \$ 1,125.00

The Panel assessed the adjournment fee for the December 16-18, 2003 hearing dates to Respondent.

The Panel assessed the adjournment fee for the June 4, 2004 and June 7, 2004 hearing dates 50% to Claimant and 50% to Respondent.

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 or the parties and the Panel. The following fees are assessed:

Three (3) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conferences:	
September 22, 2003	1 session
October 25, 2004	1 session
January 11, 2005	1 session
One (1) hearing session @ \$1,125.00/session	= \$ 1,125.00
Hearing:	
February 16, 2005	1 session
Total Forum Fees	= \$ 4,500.00

The Panel assessed \$4,500.00 of the forum fees to Respondent.

Fee Summary

1. Claimant Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 562.50
Total Fees	= \$ 6,762.50
Less payments	= \$(7,700.00)
Refund Due Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.	= \$ (937.50)

2. Respondent Donald G. Cox, Jr. is charged with the following fees and costs:

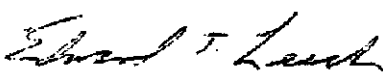
Adjournment Fees	= \$ 1,687.50
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 6,187.50
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 6,187.50

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

ARBITRATION PANEL

<i>Edward T. Leech</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Neil J. Beller, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Michael Dean</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Edward T. Leech
Chair, Public Arbitrator

2-17-05
Signature Date

Neil J. Beller, Esq.
Public Arbitrator

Signature Date

Michael Dean
Non-Public Arbitrator

Signature Date



Date of Service

NASD Dispute Resolution
Arbitration No. 03-01602
Award Page 6 of 6

ARBITRATION PANEL

<i>Edward T. Leech</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Neil J. Beller, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Michael Dean</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Edward T. Leech
Chair, Public Arbitrator

Signature Date



Neil J. Beller, Esq.
Public Arbitrator

Signature Date

Michael Dean
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

Edward T. Leech
Neil J. Beller, Esq.
Michael Dean

-
-
.

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Edward T. Leech
Chair, Public Arbitrator

Signature Date

Neil J. Beller, Esq.
Public Arbitrator

Signature Date



Michael Dean
Non-Public Arbitrator

2-16-2005

Signature Date



Date of Service