

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

R.E.A.L. Seal Company, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and  
Dean L. Welsh, Respondent

Case Number: 03-01691

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Paul W. Thomas, Esq.  
Law Offices of  
Paul W. Thomas & Associates  
Carlsbad, California

For Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.:

Robert M. Traylor, Esq.  
Seltzer Caplan McMahon Vitek  
San Diego, California

For Respondent Dean L. Welsh:

Michael T. McColloch, Esq.  
McColloch & Campitello, LLP  
Carlsbad, California

**CASE INFORMATION**

Statement of Claim filed: March 4, 2003

Claimant's Uniform Submission Agreement signed: February 28, 2003

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.:  
May 19, 2003

Statement of Answer filed by Dean L. Welsh: May 14, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement  
signed: May 19, 2003

### **CASE SUMMARY**

Claimant alleged unauthorized trading, suitability, breach of fiduciary duty, failure to supervise, and violations of the rules of NASD and NYSE. The dispute involved the purchase and/or sale of WorldCom, Inc. bonds.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$89,708.00, unspecified punitive damages, prejudgment interest, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, and arbitration costs. Additionally, Respondent Dean L. Welsh requested an order directing the expungement of any reference to this claim from any and all CRD records.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On August 25, 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.

Respondent Dean L. Welsh did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On June 21, 2004, the first day of hearing, Claimant dismissed Respondent Dean L. Welsh with prejudice.

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, 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 Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant \$24,648.00 in compensatory damages.
- 2) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant interest at the rate of 10% per annum on the sum of \$24,648.00 from the date of service of the Award until the Award is paid in full.
- 3) Claimant's request for punitive damages is denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 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	= \$ 225.00
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#### **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, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
<b>Total Member Fees</b>	<b>= \$ 3,550.00</b>

**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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: November 14, 2003 1 session	
Three (3) Hearing sessions @ \$750.00/session	= \$ 2,250.00
Hearings: June 21, 2004 2 sessions	
June 22, 2004 1 session	
<b>Total Forum Fees</b>	<b>= \$ 3,000.00.</b>

1. The Panel assessed \$1,500.00 of the forum fees to Claimant.
2. The Panel assessed \$1,500.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

**Fee Summary**

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

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,725.00
Less payments	= \$( 975.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 750.00</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 1,500.00
Total Fees	= \$ 5,050.00
Less payments	= \$(3,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,500.00</b>

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**

L. William McGrath, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Jerome M. Libenson, Esq.	-	Public Arbitrator
Carl W. Vaicek, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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L. William McGrath, Jr., Esq.  
Chair, Public Arbitrator

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Signature Date

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Jerome M. Libenson, Esq.  
Public Arbitrator

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Signature Date

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Carl W. Vaicek, Jr.  
Non-Public Arbitrator

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Signature Date

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Date of Service

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Public Arbitrator, Presiding Chair

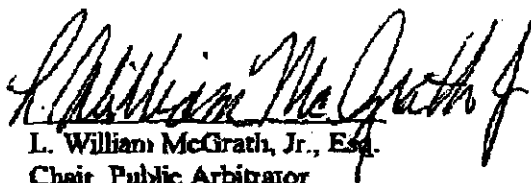
Jerome M. Libenson, Esq.

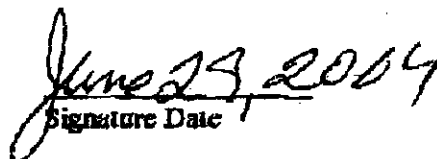
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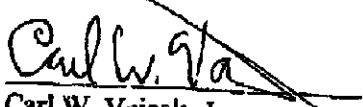
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Carl W. Vaicek, Jr.  
Non-Public Arbitrator

6-29-04  
Signature Date

6/29/04  
Date of Service

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