

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 03-02159

Samuel Greene

Names of the Respondents

Hearing Site: Charlotte, North Carolina

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Eugene Dewey Foxworth, III  
Charles Hugh Maguire, III

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

**REPRESENTATION OF PARTIES**

Claimant, Samuel Greene, hereinafter referred to as "Claimant", was represented by Kevin Rosen, Esq. and Andrew D. Gowdown, Esq., Rosen, Rosen & Hagood, LLC, Charleston, South Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Eugene Dewey Foxworth, III ("Foxworth"), and Charles Hugh Maguire, III ("Maguire"), hereinafter collectively referred to as "Respondents", were represented by Harold G. Ognelodh, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on March 17, 2003.

Claimant signed the Uniform Submission Agreement on March 18, 2003.

Statement of Answer filed by Respondents on May 21, 2003.

Respondent Foxworth signed the Uniform Submission Agreement on April 8, 2003.

Respondent Maguire signed the Uniform Submission Agreement on April 8, 2003.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on May 21, 2003.

**CASE SUMMARY**

Claimant in his Statement of Claim asserted the following causes of action, among others: unsuitability, failure to supervise, breach of contract, breach of fiduciary duty, negligence, misrepresentation, and fraud. The causes of action relate to tax liability associated with the sale of various unspecified stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which

relief may be granted, Respondents acted in good faith, Claimant was negligent, laches, estoppel, waiver, ratification, and Respondents complied with all applicable regulations.

#### RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$ 60,000.00
Punitive Damages	\$100,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the claim be dismissed, that the Panel expunge all reference to this proceeding and the prior customer complaint from the individual Respondent's CRD records, that all costs be assessed against Claimant and that Respondents are awarded such other and further relief as is deemed just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

Respondent Maguire only appeared in person at the hearing on October 29, 2004. He appeared through counsel on the other days of hearing.

After the Claimant's case-in-chief, Respondents made an oral motion to dismiss the case. The Panel denied this motion.

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.

#### AWARD

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

1. Respondents Merrill Lynch and Foxworth shall pay Claimant compensatory damages in the amount of \$10,000.00;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Maguire's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Maguire 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 punitive 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
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#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent 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

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 15-16, 2004 adjournment requested by Respondents	waived by Panel
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#### 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450	= \$ 900.00
Pre-hearing conferences: February 18, 2004 1 session	
March 9, 2004 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: December 3, 2003 1 session	
October 1, 2004 1 session	

Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: October 5, 2004 2 sessions	
October 6, 2004 2 sessions	

October 28, 2004      2 sessions  
October 29, 2004      2 sessions

Total Forum Fees = \$12,150.00

1. The Panel has assessed \$12,150.00 of the forum fees jointly and severally to Respondents Merrill Lynch and Foxworth.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent Merrill Lynch requested copies of tapes = \$ 135.00

FEE SUMMARY

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

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 2,550.00
Refund Owed Claimant	= \$ 2,250.00

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

Member Fees	= \$ 5,200.00
Administrative Costs	= \$ 135.00
Total Fees	= \$ 5,335.00
Less payments	= \$ 5,335.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Forum Fees	= \$12,150.00
Total Fees	= \$12,150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$12,150.00

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

ARBITRATION PANEL

Bernadette F. Rasmussen	-	Public Arbitrator, Presiding Chairperson
Kenneth Hoffner, M.S.	-	Public Arbitrator, Panelist
Linda A. Allen	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Bernadette F. Rasmussen

Bernadette F. Rasmussen  
Public Arbitrator, Presiding Chairperson

11/10/04  
Signature Date

Kenneth Hoffner, M.S.  
Public Arbitrator, Panelist

Signature Date

Linda A. Allen  
Non-Public Arbitrator, Panelist

Signature Date

November 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Bernadette F. Rasmussen  
Public Arbitrator, Presiding Chairperson

Signature Date

Kenneth Hoffner, M.S.  
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Public Arbitrator, Panelist

11 Nov 04  
Signature Date

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Public Arbitrator, Panelist

Signature Date

  
Linda A. Allen  
Non-Public Arbitrator, Panelist

11-8-04  
Signature Date

November 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)