

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Donald Hunter

and

Case Number: 03-02160  
Hearing Site: Detroit, Michigan

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

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**NATURE OF DISPUTE**

Customer v. Member Firm

**REPRESENTATION OF PARTIES**

Donald Hunter ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan, P.L.L.C., West Bloomfield, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent") was represented by Dennis K. Egan, Esq., Butzel Long, Bloomfield Hills, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 25, 2003. The Submission Agreement of Claimant Donald Hunter was signed on or about February 26, 2003.

Statement of Answer was filed by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on or about June 5, 2003. The Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about June 9, 2003.

Claimant filed a Motion to Compel on or about August 29, 2003.

Claimant filed a Notice of Default on or about November 10, 2003. Claimant filed an Amended Notice of Default on or about November 11, 2003. Respondent filed a Response on or about November 28, 2003.

Claimant filed a Second Notice of Default on or about December 19, 2003. Respondent filed a Motion for Modification of Order and Supplemental Response to Amended Notice of Default on or about December 30, 2003. Claimant filed a Response to Respondent's Motion on or about January 9, 2004.

### **CASE SUMMARY**

Claimant asserted that Respondent failed to turn over account information including monthly account statements, account opening documents, amendments and letters of authority and any documents which in any way regard the addition or deletion of persons who hold ownership in Claimant's accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted that Respondent is in the process of investigating Claimant's allegations and locating the requested documents.

### **RELIEF REQUESTED**

Claimant requested an award of \$50 for the NASD filing fee, plus \$500 in expenses, attorney fees, sanctions, and immediate production of documents.

Respondent requested unspecified relief.

### **OTHER ISSUES CONSIDERED & DECIDED**

During the pre-hearing conference on October 9, 2003, Respondents agreed to provide documents and the Arbitrator entered the Stipulated Order on or about November 28, 2003. The Arbitrator entered an Order on Motion to Compel on or about October 21, 2003.

In Orders entered on or about December 18, 2004, the Arbitrator denied Claimant's Second Motion for Default, but Ordered Respondent to produce all documents as previously ordered.

During the pre-hearing conference on February 23, 2004, the parties requested that the Arbitrator rule on the outstanding issues of fees, costs and sanctions on the papers.

The parties submitted brief regarding relief requests on or about November 21, 2003.

### **AWARD**

After considering the pleadings, and the evidence presented pursuant to the Arbitrator's Order, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's requests for the NASD filing fee, expenses and attorney fees are denied with prejudice;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;

- 3.) That any relief not specifically enumerated, including punitive damages, sanctions, 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 = \$25.00

#### **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 = \$150.00

#### **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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator x \$25.00 = \$75.00

Pre-hearing conferences: October 9, 2003 1 session

February 5, 2004 1 session

February 23, 2004 1 session

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Total Forum Fees = \$75.00

The Arbitration Panel has assessed \$75.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

### **Fee Summary**

Claimant, Donald Hunter, is liable for:

Initial Filing Fee = \$ 25.00

Total Fees = \$ 25.00

Less payments = \$ 50.00

Refund Due from NASD Dispute Resolution = \$ 25.00

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

Member Fees	= \$150.00
Forum Fees	= \$ 75.00
Total Fees	= \$225.00
Less payments	= \$150.00
Balance Due NASD Dispute Resolution	= \$ 75.00

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

**ARBITRATOR**

Robert G. Falbisaner - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

/s/ Robert G. Falbisaner, Esq.  
Robert G. Falbisaner  
Public Arbitrator, Presiding Chair

03/29/04  
Signature Date

03/29/04  
Date of Service (For NASD office use only)

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

Member Fees	= \$150.00
Forum Fees	= \$ 75.00
Total Fees	= \$225.00
Less payments	= \$150.00
Balance Due NASD Dispute Resolution	= \$ 75.00

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

**ARBITRATOR**

Robert G. Falbisaner - Public Arbitrator, Presiding Chair

Arbitrator's Signature:



Robert G. Falbisaner  
Public Arbitrator, Presiding Chair

3/30/04  
Signature Date

                      
Date of Service (For NASD office use only)