

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

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In the Matter of the Arbitration Between:

Kevin Krueger, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Lawrence P. Smith, Jr., Respondents

Case Number: 03-02258

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Timothy A. Canning, Esq.  
Richard Sacks  
Securities Arbitration Consultant  
Novato, California

For Respondents:

Eric J. Glassman, Esq.  
Mennemeier, Glassman & Stroud  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: March 28, 2003

Claimant's Uniform Submission Agreement signed: March 7, 2003

Joint Statement of Answer filed by Respondents: August 8, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: June 13, 2003

Respondent Lawrence P. Smith, Inc.'s Uniform Submission Agreement signed: June 16, 2003

### **CASE SUMMARY**

Claimant alleged fraud, breach of contract and breach of fiduciary duty. Claimant's allegations involved unspecified securities transactions.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$413,000.00, unspecified punitive damages and costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent Lawrence P. Smith, Jr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

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

On July 1, 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 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. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Lawrence P. Smith, Jr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Lawrence P. Smith, Jr. 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 attorney's fees.
4. All other relief requested and not expressly granted is denied.

### **FEEES**

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	= \$ 300.00
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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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</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 Chair/Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00  
Pre-hearing conferences: September 22, 2003 1 session  
February 25, 2004 1 session

Three (3) Hearing sessions @ \$1,125.00/session = \$ 3,375.00  
Hearings: April 12, 2004 2 sessions  
April 13, 2004 1 session

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**Total Forum Fees** = \$ 5,625.00

The Panel assessed \$5,625.00 of the forum fees to Claimant.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,625.00
Total Fees	= \$ 5,925.00
<u>Less payments</u>	= \$( 1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,500.00</b>

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

Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$( 5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</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**

<b>Dean J. Dietrich, Esq.</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Nathaniel Charles Berkowitz</b>	-	<b>Public Arbitrator</b>
<b>Linda L. Blackwell</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

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Signature Date

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Nathaniel Charles Berkowitz  
Public Arbitrator

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Signature Date

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Linda L. Blackwell  
Non-Public Arbitrator

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Signature Date

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Date of Service

**ARBITRATION PANEL**

Dean J. Dietrich, Esq.	-	Public Arbitrator, Presiding Chair
Nathaniel Charles Berkowitz	-	Public Arbitrator
Linda L. Blackwell	-	Non-Public Arbitrator

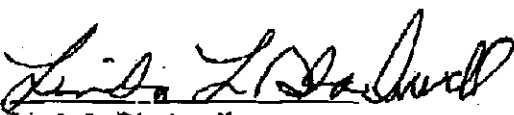
**Concurring Arbitrators' Signatures**

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Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

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Signature Date:

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Nathaniel Charles Berkowitz  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Linda L. Blackwell  
Non-Public Arbitrator

4-22-04  
Signature Date

\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Dean J. Dietrich, Esq.	-	Public Arbitrator, Presiding Chair
Nathaniel Charles Berkowitz	-	Public Arbitrator
Linda L. Blackwell	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

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Signature Date:

  
\_\_\_\_\_  
Nathaniel Charles Berkowitz  
Public Arbitrator

April 22, 04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Linda L. Blackwell  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service

**RECEIVED**

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Arbitration No. 03-02258  
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NASD  
DISPUTE RESOLUTION

**ARBITRATION PANEL**

Dean J. Dietrich, Esq.

Nathaniel Charles Berkowitz

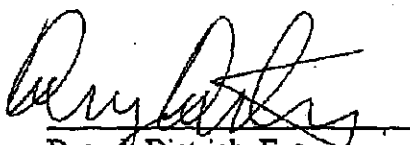
Linda L. Blackwell

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Dean J. Dietrich, Esq.  
Chair, Public Arbitrator

April 22, 2004  
Signature Date

Nathaniel Charles Berkowitz  
Public Arbitrator

Signature Date

Linda L. Blackwell  
Non-Public Arbitrator

Signature Date

April 29, 2004  
Date of Service