

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

William L. Freund and Joann M. Freund, William L. Freund IRA, and Joann M. Freund IRA,
Claimants v. Dennis P. Bloom and Merrill Lynch, Pierce, Fenner & Smith Incorporated,
Respondents

Case Number: 03-02386

Hearing Site: Seattle, Washington

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

REPRESENTATION OF PARTIES

For Claimants:

David J. Lenci, Esq.
Cabrelle M Abel, Esq.
Preston Gates & Ellis
Seattle, Washington

For Respondents:

Eric D. Lansverk, Esq.
Hillis Clark Martin &
Peterson
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: April 1, 2003

Claimants' Joint Uniform Submission Agreement signed: March 31, 2003

Joint Statement of Answer filed by Respondents Dennis P. Bloom and Merrill Lynch, Pierce,
Fenner & Smith, Incorporated: June 13, 2003

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

Respondent Dennis P. Bloom's Uniform Submission Agreement signed: June 16, 2003

CASE SUMMARY

Claimants alleged negligence, negligent misrepresentation, violation of Washington State Securities Act, breach of fiduciary duty, and breach of contract. Claimant's allegations involved transactions in their joint account and in their IRA accounts in stocks such as AT&T, Lucent, and Global Crossing.

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

RELIEF REQUESTED

Claimants requested \$400,000.00 in compensatory damages, disgorgement of fees and commissions in the amount of \$3,029.00, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this matter from Dennis P. Bloom's CRD records, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 6, 2005, Claimants filed a Motion for Sanctions for Spoliation of Evidence. On April 11, 2005, Respondents filed a response to Claimants' motion. On April 11, 2005, Claimants filed a Reply to Respondents' response. On April 18, 2005, the Chair issued an Order stating that the full Panel would rule on Claimants' motion. The Panel hereby denies Claimants' motion.

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) Claimants' claims with respect to the William L. Freund IRA and the Joann M. Freund IRA are denied in their entirety.
 - 2) The Panel hereby makes the following award of compensatory damages in connection with Claimants' claims with respect to their joint Merrill Lynch CMA account: Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimants William L. Freund and Joann M. Freund the sum of \$172,999.00 in compensatory damages, and Respondent Dennis P. Bloom is liable to and shall pay Claimants William L. Freund and Joann M. Freund the sum of \$43,250.00 in compensatory damages.
 - 3) The parties shall bear their respective costs, including attorney's fees.
 - 4) 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 = \$ 300.00

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

Hearing Process Fee = \$2,750.00

Total Member Fees = **\$5,200.00**

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:

One (1) pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00
Pre-hearing conference: April 15, 2005 1 session

Two (2) pre-hearing conference session with the Panel @ \$1,125.00/session = \$2,250.00
Pre-hearing conference: September 25, 2003 1 session
August 19, 2004 1 session

Four (4) hearing sessions @ \$1,125.00/session = \$4,500.00
Hearings: April 28, 2005 2 sessions
April 29, 2005 2 sessions

Total Forum Fees = **\$7,200.00**

The Panel assessed \$6,075.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Forum fees in the amount of \$1,125.00 for the August 19, 2004 pre-hearing conference were waived.

Fee Summary

1. Claimants William L. Freund and Joann M. Freund, William L. Freund IRA, and Joann M. Freund IRA are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$(1,425.00)
Refund Due Claimants	= \$(1,125.00)

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 6,075.00</u>
Total Fees	= \$11,275.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 6,075.00

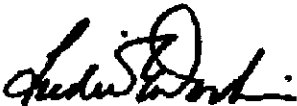
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

NASD Dispute Resolution
Arbitration No. 03-02386
Award Page 5 of 5

ARBITRATION PANEL

<i>Frederic E. Dorkin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Mary C. Eklund, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard Lawrence Hinton</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Frederic E. Dorkin, Esq.
Chair, Public Arbitrator

May 5, 2005
Signature Date

Mary C. Eklund, Esq.
Public Arbitrator

Signature Date

Richard Lawrence Hinton
Non-Public Arbitrator

Signature Date

5/6/05
Date of Service

ARBITRATION PANEL

<i>Frederic E. Dorkin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Mary C. Eklund, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard Lawrence Hinton</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Frederic E. Dorkin, Esq.
Chair, Public Arbitrator

Signature Date

M. C. Eklund
Mary C. Eklund, Esq.
Public Arbitrator

5-5-05
Signature Date

Richard Lawrence Hinton
Non-Public Arbitrator

Signature Date

5/6/05
Date of Service

ARBITRATION PANEL

<i>Frederic E. Dorkin, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Mary C. Eklund, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard Lawrence Hinton</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Frederic E. Dorkin, Esq.
Chair, Public Arbitrator

Signature Date

Mary C. Eklund, Esq.
Public Arbitrator

Signature Date

Richard L. Hinton

Richard Lawrence Hinton
Non-Public Arbitrator

5/04/2005

Signature Date

5/6/05

Date of Service