

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David C. Mason and Michael Mason (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Henry Blodget (Respondents)

Case Number: 03-02393

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants David C. Mason ("D. Mason") and Michael Mason ("M. Mason") hereinafter collectively referred to as "Claimants": Sheldon H. Gopstein, Esq., Law Offices of Sheldon H. Gopstein, Esq., New York, NY.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): Terry R. Weiss, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, GA.

Respondent Henry Blodget ("Blodget"): Joseph D. Edmondson, Jr., Esq., Foley & Lardner, Washington, D.C.

Merrill Lynch and Blodget are hereinafter collectively referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: April 1, 2003.

Amended Statement of Claim filed on or about: July 24, 2003.

Claimants signed the Uniform Submission Agreement: March 16, 2003.

Statement of Answer filed by Respondent Merrill Lynch on or about: June 25, 2003.

Amended Answer filed by Respondent Merrill Lynch on or about: September 2, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 8, 2003.

Statement of Answer filed by Respondent Blodget on or about: June 18, 2003.

Response to Claimants' Amended Statement of Claim filed by Blodget on or about: August 8, 2003.

Respondent Blodget signed the Uniform Submission Agreement: June 7, 2003.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimants asserted the following causes of action: misleading recommendations; misrepresentation/omission; securities fraud; breach of fiduciary duties; common law fraud; breach of contract; negligence; control person liability; respondeat superior; apparent authority; and failure to supervise. Claimants' claims involved unspecified securities.

Unless specifically admitted in its Answer and Amended Answer, Respondent Merrill Lynch denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer and Response to Claimants' Statement of Claim, Respondent Blodget denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of \$736,362.62 for D. Mason and \$833,849.03 for M. Mason; punitive damages in the sum of \$2,209,087.80 for D. Mason and \$2,501,547.00 for M. Mason; plus commissions; interest; NASD fees; attorneys' fees and costs; and such other and further relief as may be just, proper, and equitable.

In its Answer and Amended Answer, Respondent Merrill Lynch requested that the Panel dismiss Claimants' Statement of Claim in its entirety and order that all costs of this arbitration be borne by Claimants.

In his Answer and Response to Claimants' Amended Statement of Claim, Respondent Blodget requested that Claimants' claims be dismissed with prejudice, that he be awarded his attorneys' fees and costs, and that all references to this claim be expunged from his CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

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. Claimants' claims are denied in their entirety.

2. Any and all relief not specifically addressed herein is denied.

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	= \$600.00
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 14-15, 2004, adjournment by Claimant	= Waived
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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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 6,000.00
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Pre-hearing conferences:	November 25, 2003	1 session
	February 17, 2004	1 session
	July 6, 2004	1 session
	July 16, 2004	2 sessions

Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00
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Hearing Dates:	August 4, 2004	2 sessions
	August 5, 2004	2 sessions
	August 6, 2004	2 sessions

Total Forum Fees	= \$13,200.00
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1. The Panel has assessed \$6,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$6,600.00 of the forum fees against Merrill Lynch.

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 duplication of hearing tapes = \$30.00
2. Respondent Blodget requested duplication of hearing tapes = \$30.00

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 6,600.00
Total Fees	= \$ 7,200.00
<u>Less payments</u>	= \$ 1,830.00
Balance Due NASD Dispute Resolution	= \$ 5,370.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 6,600.00
<u>Administrative Costs</u>	= \$ 30.00
Total Fees	= \$16,230.00
<u>Less payments</u>	= \$ 9,630.00
Balance Due NASD Dispute Resolution	= \$ 6,600.00

3. Respondent Blodget is solely liable for:

<u>Administrative Costs</u>	= \$ 30.00
Total Fees	= \$ 30.00
<u>Less payments</u>	= \$ 30.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

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ARBITRATION PANEL

Diane Ciccone, Esq.
Donald Ferguson, Esq.
Michael J. McManus, Esq.

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.


Diane Ciccone, Esq.
Public Arbitrator, Presiding Chairperson

8/15/04
Signature Date

Donald Ferguson, Esq.
Public Arbitrator

Signature Date

Michael J. McManus
Non-Public Arbitrator

Signature Date

August 20, 2004
Date of Service (For NASD Dispute Resolution use only)

FROM : DONALD FERGUSON

FAX NO. : 212 838 7947

Aug. 12 2004 11:57AM P2

08/12/2004 08:00 FAX 212 858 4389

NASD REGULATION

@007/007

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Donald Ferguson, Esq.	-	Public Arbitrator
Michael J. McManus, Esq.	-	Non-Public Arbitrator

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Diane Ciccone, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Donald Ferguson
Donald Ferguson, Esq.
Public Arbitrator

8.12.04
Signature Date

Michael J. McManus
Non-Public Arbitrator

Signature Date

August 20, 2004
Date of Service (For NASD Dispute Resolution use only)

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Donald Ferguson, Esq.	-	Public Arbitrator
Michael J. McManus, Esq.	-	Non-Public Arbitrator

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Diane Ciccone, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Donald Ferguson, Esq.
Public Arbitrator

Signature Date



Michael J. McManus
Non-Public Arbitrator

8/13/04

Signature Date

August 20, 2004

Date of Service (For NASD Dispute Resolution use only)