
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Erich McMann

Case Number: 03-02609

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Chicago, Illinois

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant, Erich McMann, ("McMann"), or, ("Claimant"), : Michael Stanton, Esq., of James, Hoyer, Newcomer & Smiljanich P.A., located in Tampa, Florida.

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., ("MLPF&S), or ("Respondent"):
Bennett Falk, Esq., of Bressler, Amery & Ross, located in Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 10, 2003.

Claimant, McMann, signed the Uniform Submission Agreement: March 25, 2003.

Statement of Answer filed by Respondent, MLPF&S, on or about: April 25, 2003.

Respondent, MLPF&S, signed the Uniform Submission Agreement: May 1, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: negligence, gross negligence; breach of fiduciary duty; fraudulent inducement; and breach of contract. The causes of action relate to the purchase and sale of Amazon. COM, Inc., Infospace, Inc. and Ariba, Inc., stocks.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant assumed the risks of his investments; Claimant understood the risks of his investments; analyst opinions and forecasts are not guarantees as a matter of law; and Claimants loss were due to market conditions

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 100,000.00
Punitive Damages	\$ unspecified
Interest	\$ unspecified
Attorneys' Fees	\$ unspecified

Respondent requested that the claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 16, 2004 the parties requested that they provide written submissions with evidentiary attachments in lieu of a hearing. On March 1, 2005 the parties and the Panel convened for a telephonic conference regarding Respondents Motion to Dismiss and all of the responsive pleadings. During the conference Arbitrator Vu was disconnected from the conference. NASD staff made efforts to reconnect Mr. Vu but were told that he was unavailable. The parties agreed to continue the hearing with the remaining arbitrators. At the conclusion of the oral arguments Chairman Patterson allowed the parties (10) business days to confer with their clients to determine if they would accept a two member Panel. The parties agreed to the composition of a two member Panel. On or about April 13, 2005 the Panel ruled in favor of Respondents Motion to Dismiss. On or about May 31, 2005 the Panel rendered a decision which disposed of all issues in connection with this case.

AWARD

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

1. All of Claimant Erich Mc Mann's claims against Merrill Lynch, Pierce, Fenner & Smith, Inc., shall be dismissed in their entirety with prejudice;
2. Other than the forum fees, noted below, each party shall bear their own costs; and,
3. 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 = \$ 225.00

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 event- giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc, is the Member firm.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

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:

Number (2) Pre-hearing sessions with the Panel	\$ 750.00	= \$ 1,500.00
Pre-hearing conference(s):	March 1, 2002 1 session	
	April 4, 2005 1 session	
Total Forum Fees		= \$1,500.00

1. The Panel has assessed \$ 1,500.00 of the forum fees to Claimant Erich McMann.

Fee Summary

Claimant, McMann, is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 1,500.00
Total Fees	= \$ 1,725.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondent, M,L,F&S is solely liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Total Fees</u>	= \$ 3,550.00
<u>Less payments</u>	= \$ 3,550.00
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.

ARBITRATION PANEL

Michael Patterson, Esq.-Arbitrator Presiding Chairperson
Howard B. Silverman- Non-Public Arbitrator

Concurring Arbitrators' Signature

Michael Patterson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Howard B. Silverman
Non-Public Arbitrator

Signature Date

June 23, 2005
Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signature

Michael Patterson, Esq.
Public Arbitrator, Presiding Chairperson

Howard B. Silverman
Howard B. Silverman
Non-Public Arbitrator

Signature Date

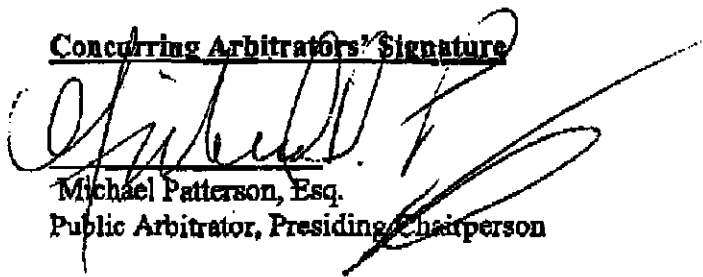
6/20/2005
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Concurring Arbitrators' Signature



Michael Patterson, Esq.

Public Arbitrator, Presiding Chairperson

6-17-05

Signature Date

Howard B. Silverman

Non-Public Arbitrator

Signature Date

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