

Amended Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Peter T. Holland, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

Case Number: 03-02910

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Robert B. Sommer, Esq. and
Robert Schwitzer, Esq.
Hergenroeder, Rega and Sommer, LLC
Pittsburgh, Pennsylvania

For Respondent:

Curt R. Hineline, Esq.
Bridgette M. Helms, Esq.
Hassan Abedi, Esq.
Dorsey & Whitney LLP
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: April 21, 2003

Amended Statement of Claim filed: April 29, 2003

Claimant's Uniform Submission Agreement signed: April 9, 2003

Statement of Answer filed by Respondent: July 1, 2003

Amended Statement of Answer filed by Respondent: August 19, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: June 2, 2003

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, misrepresentations and non-disclosures, unsuitable recommendations, negligence, failure to execute, violation of state securities law, and failure to supervise. Claimant's allegations involved securities in Spectrasite, Inc. and other unspecified securities in the technology sector.

On August 19, 2003, Respondent's filed an Amended Statement of Answer pursuant to the NASD Code of Arbitration Procedure Rule 10328(a). Respondent's Amended Statement of Answer set forth in greater detail than the Initial Statement of Answer, the basis of its denial of the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Both Respondent's Initial and Amended Statements of Answer denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$620,796.00 in compensatory damages, 8% interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

ADDITIONAL DISCLOSURES

At the commencement of this arbitration hearing, it became clear for the first time that Hassan Abedi, Esq., was attending as a member of the Dorsey & Whitney law firm, which represents Respondent in this matter. His participation at the hearing was limited to that of an observer and an incidental assistant to Curt Hine, Esq., Respondent's lead counsel. NASD, in its Dispute Resolution Western Regional Office, formerly employed Mr. Abedi. While so employed, Mr. Abedi acted as the initial case administrator in the present case. Panel Chair, Joseph C. Roberts, disclosed that he has acted as a public arbitrator in numerous NASD cases in which Mr. Abedi acted as NASD case administrator. Panelist Joseph L. Mangan also disclosed that he has acted as an arbitrator in at least one NASD case in which Mr. Abedi was case administrator. Both Mr. Roberts and Mr. Mangan confirmed that these prior contacts with Mr. Abedi would not prejudice their ability to remain impartial and to decide all matters in controversy in a fair manner. After making these additional disclosures, Claimant's counsel, Robert B. Sommer, Esq. conferred with opposing counsel and with Claimant Peter T. Holland. Thereafter Mr. Sommer, on behalf of Claimants, and Mr. Hine, on behalf of Respondent, re-confirmed that they accept the panel's composition.

OTHER ISSUES CONSIDERED AND DECIDED

After four hearing sessions that included opening arguments and presentation of Claimant's evidence, Claimant voluntarily moved to dismiss with prejudice all claims actually advanced in the Statement of Claim and all claims that could have been advanced in the Statement of Claim.

In addition, in the presence of all parties and the arbitration panel, Claimants forever waived all claims, if any, that they may have by reason of the same facts, acts and omissions alleged herein against any officer, director, employee or agent of Respondent, including, without limitation, Peter Wicklund.

Respondent joined Claimant in moving that all claims be dismissed with prejudice and requested expungement of all reference to this arbitration from the record of Peter Wicklund's registration records maintained by the NASD Central Registration Depository. While Mr. Wicklund was not a named party in this matter, his name appeared in the Statement of Claim.

The original Award for this matter, served on August 5, 2004, contained a ministerial error in paragraph 3. Paragraph 3 of the original Award recommended expungement of all reference to this arbitration from the record of "Respondent Peter Wicklund's registration records..." Mr. Wicklund was inadvertently referred to as a Respondent. Mr. Wicklund was not and has never been a named party to this case. This Amended Award correctly reflects this fact.

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, and the joint request of the parties, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel finds there to be no basis for the claims asserted in this matter.
- 2) Claimant's claims are denied and dismissed in their entirety and with prejudice.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Peter Wicklund's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Peter Wicklund must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The Parties shall bear their respective costs, including, without limitation, filing costs, member fees, attorney's fees, expert witness fees and all other case preparation and presentation costs.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure (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	= \$ 375.00
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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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

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 the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: December 5, 2003 1 session	
Four (4) Hearing sessions with the Panel @ \$1,200.00/session	= \$ 4,800.00
Hearings: July 26, 2004 2 sessions	
July 27, 2004 2 sessions	
Total Forum Fees	= \$ 6,000.00

1. The Panel assessed \$3,000.00 of the forum fees to Claimant.
2. The Panel assessed \$3,000.00 of the forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 3,000.00
Total Fees	= \$ 3,375.00
Less payments	= \$ (1,575.00)
Balance Due Claimant	= \$ 1,800.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 3,000.00
Total Fees	= \$10,000.00
Less payments	= \$ (7,000.00)
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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.

ARBITRATION PANEL

Joseph C. Roberts
Imants J. Leskinovitch
Joseph L. Mangan

- *Public Arbitrator, Presiding Chair*
- *Public Arbitrator*
- *Non-Public Arbitrator*



Joseph C. Roberts
Chair, Public Arbitrator

8/12/04
Signature Date

Imants J. Leskinovitch
Public Arbitrator

Signature Date

Joseph L. Mangan
Non-Public Arbitrator

Signature Date


8/12/04
Date of Service

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- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Peter Wicklund's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Peter Wicklund must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The Parties shall bear their respective costs, including, without limitation, filing costs, member fees, attorney's fees, expert witness fees and all other case preparation and presentation costs.
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Chair, Public Arbitrator

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Public Arbitrator, Presiding Chair

-

Public Arbitrator

-

Non-Public Arbitrator



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Chair, Public Arbitrator

08-04-04

Signature Date

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Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

8/5/04

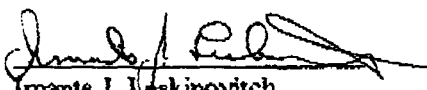
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