

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

H. Jerry Longley, Ph.D

Case Number: 03-02945

Name of the Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and Stephen C. McCannon

Hearing Site: Albuquerque, New Mexico

NATURE OF DISPUTE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant, H. Jerry Longley, Ph.D, appeared *pro se* in this matter.

Brett D. Sherman, Esq. of Merrill Lynch Pierce Fenner & Smith, Inc. Office of General Counsel, located in New York, New York, represented Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Stephen C. McCannon.

CASE INFORMATION

Statement of Claim filed on April 22, 2003.

Claimant, H. Jerry Longley, Ph.D, signed the Uniform Submission Agreement on May 8, 2003.

Statement of Answer filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen C. McCannon on or about July 15, 2003.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen C. McCannon did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, manipulations, unauthorized trading, failure to supervise, negligence, and breach of contract. The causes of action relate to the order execution of various blue chip stocks with Merrill Lynch Pierce Fenner & Smith, Inc.

Unless specifically admitted in its Answer, Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen C. McCannon denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. The Claimant has failed to state a claim upon which relief may be granted.
2. All losses allegedly suffered by the Claimant were proximately caused by the Claimant's own conduct or negligence.
3. The Claimant has failed to act or mitigate his alleged damages, if any.
4. The Claimant authorized, ordered, approved, participated in and ratified the acts and transactions complained of and upon which recovery is sought and the Claimant was accordingly estopped from recovery herein.
5. All transaction upon which Claimant bases his alleged claims against Respondents were conducted in accordance with all applicable NASD and Exchange Rules and regulations and in compliance with all applicable provisions of state and federal law.
6. Respondent Merrill Lynch properly supervised the servicing of the Claimant's accounts.
7. Respondents reserve the right to pending completion of its investigation and pre-hearing discovery to assert such additional defenses as may exist.

At the hearing of this matter, Respondent made an oral Motion to Dismiss and Motion for the Expungement of any reference to this arbitration from the registration records of Respondent Stephen C. McCannon maintained by the NASD Central Registration Depository ("CRD").

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 65,000.00
Punitive Damages	\$260,000.00
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen C. McCannon, requested that the Statement of Claim be dismissed in its entirety, that the Arbitration Panel issue an Order directing that all references of this proceeding and the underlying complaint be expunged from the CRD records of the individual Respondent, that the cost of this proceeding is assessed against Claimant, and that Respondents be awarded such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel denied Respondents' Motion to Dismiss, but granted the Motion for Expungement.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen C. McCannon, did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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, 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. Any and all claims asserted by Claimant, H. Jerry Longley, Ph.D, are denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Stephen C. McCannon's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Stephen C. McCannon must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. is solely liable for and shall pay to Claimant, H. Jerry Longley, Ph.D, the sum of \$300.00 as reimbursement for the non-refundable NASD Dispute Resolution filing fee.
4. Parties shall bear their own other costs, including attorneys' fees, except as specified herein.
5. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 300.00
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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 to this case and is assessed the following fees:

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 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:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference(s): November 17, 2003 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$2,250.00

Hearing Date: March 3, 2004 2 sessions

Total Forum Fees = \$3,375.00

1. The Panel has assessed 100% of the total forum fees in the amount of \$3,375.00 solely to the Respondent, Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

1. Claimant, H. Jerry Longley, Ph.D, is solely liable for:

Initial Filing Fee = \$ 300.00

Less payments = \$1,425.00

Refund Due from NASD Dispute Resolution = \$1,125.00

2. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc, is solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$3,375.00

Total Fees = \$8,575.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$3,375.00

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

ARBITRATION PANEL

Patrick J. Halter	-	Public Arbitrator, Presiding Chairperson
George F. Bingham, Esq.	-	Public Arbitrator
Jonathan H. Larson, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Patrick J. Halter
Public Arbitrator, Presiding Chairperson

3/10/04
Signature Date

George F. Bingham, Esq.
Public Arbitrator

3/10/04
Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

3/10/04
Signature Date

3/11/04
Date of Service (For NASD Dispute Resolution office use only)

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George F. Bingham, Esq.	-	Public Arbitrator
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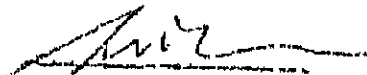
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Patrick J. Halter
Public Arbitrator, Presiding Chairperson

Signature Date



George F. Bingham, Esq.
Public Arbitrator

10 MARCH 2004

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

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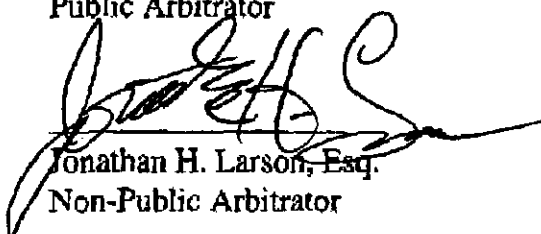
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George F. Bingham, Esq.
Public Arbitrator

Signature Date



Jonathan H. Larson, Esq.
Non-Public Arbitrator

03/10/2004

Signature Date

Date of Service (For NASD Dispute Resolution office use only)