

**STIPULATED AWARD  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

Name of Claimant

Ted H. Shaw

and

Case Number: 03-03027  
Hearing Site: Detroit, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,  
and Charles O. Hundley

---

**NATURE OF CASE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Ted H. Shaw ("Claimant") was represented by Brian Smith, Esq., Alan R. Miller, P.C., Birmingham, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Charles O. Hundley ("Shaw"), hereinafter referred to as "Respondents," were represented by Clarence L. Pozza, Esq. and W. Scott Turnbull, Esq., Miller Canfield, Paddock and Stone, P.L.C., Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 24, 2003. The Submission Agreement of Claimant, Ted H. Shaw, was signed on or about April 19, 2003.

The Statement of Answer was filed jointly by Respondents, MLPFS and Shaw, on or about August 5, 2003. The Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about June 12, 2003.

Respondents filed a Request to Change Location of Hearing on or about August 5, 2003. Claimant filed a Response to the Motion on or about August 22, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing, negligence, gross negligence, unsuitability, failure to supervise, misrepresentation, fraud, and violations of federal and state securities laws. The causes of action related the recommendation and purchase of various securities including the Merrill Lynch Internet Strategies Fund, Putnam High Yield Bond Fund, Lennar, Corning, Calpine, EMC, and Verizon.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted factual and legal defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by reason of the applicable statutes of limitations or other periods of limitation; and the Statement of Claim is barred by reason of Claimant's negligence, comparative negligence and contributory negligence.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$300,000 in compensatory damages, plus lost opportunity costs, refund of commissions, punitive/exemplary damages, interest, costs, attorneys' fees, and such other and further relief as the panel deemed just and appropriate.

Respondents requested that the claims asserted against them be denied in their entirety, that they be awarded their costs and attorneys' fees, that all references to this matter be expunged from Respondent Handley's CRD record, and all other relief the panel deemed just and appropriate.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Charles O. Hundley, did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared and testified through counsel at the prehearing conference, is bound by the determination of the arbitration panel on all issues submitted.

The panel denied Respondents' Motion to Change Location of Hearing on or about October 20, 2003.

Claimant, having had an opportunity to review the records and documents produced in prehearing discovery and discuss the contents thereof with his counsel, stipulates and agrees with Respondents to the expungement of all references to the above-captioned arbitration from all registration records of Charles O. Hundley maintained by the NASD Central Registration Depository ("CRD").

Claimant has agreed to withdraw and dismiss all claims in this matter against all Respondents with prejudice and without costs.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims, having been withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Charles O. Hundley's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Charles O. Hundley must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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

#### **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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: October 20, 2003 1 session	
<b>Total Forum Fees</b>	<b>= \$ 1,125.00</b>

The Arbitration Panel has assessed \$562.50 of the forum fees to Ted H. Shaw.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Charles O. Hundley.

### **FEE SUMMARY**

Claimant, Ted H. Shaw, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
<b>Total Fees</b>	<b>= \$ 862.50</b>
<b>Less payments</b>	<b>= \$ 1,425.00</b>
<b>Balance refunded by NASD Dispute Resolution</b>	<b>= \$ 562.50</b>

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

Member Fees	= \$ 5,200.00
<b>Total Fees</b>	<b>= \$ 5,200.00</b>
<b>Less payments</b>	<b>= \$ 5,200.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Charles O. Hundley, are jointly and severally liable for:

Forum Fees	= \$ 562.50
<b>Total Fees</b>	<b>= \$ 562.50</b>
<b>Less payments</b>	<b>= \$ 0.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 562.50</b>

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

**ARBITRATION PANEL**

Andrew G. Young - Public Arbitrator, Presiding Chair  
Walter H. Clements, Esq. - Public Arbitrator  
Hal H. Smith, II - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Andrew G. Young  
Andrew G. Young  
Public Arbitrator, Presiding Chair

08/26/04  
Signature Date

/s/ Walter H. Clements, Esq.  
Walter H. Clements, Esq.  
Public Arbitrator

08/25/04  
Signature Date

/s/ Hal H. Smith, II  
Hal H. Smith, II  
Non-Public Arbitrator

08/29/04  
Signature Date

09/02/04  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Andrew ~~G~~. Young - Public Arbitrator, Presiding Chair  
Walter H. Clements, Esq. - Public Arbitrator  
Hal H. Smith, II - Non-Public Arbitrator

Concurring Arbitrators:

  
\_\_\_\_\_  
Andrew ~~G~~. Young  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Walter H. Clements, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Hal H. Smith, II  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Andrew H. Young - Public Arbitrator, Presiding Chair  
Walter H. Clements, Esq. - Public Arbitrator  
Hal H. Smith, II - Non-Public Arbitrator

**Concurring Arbitrators:**

\_\_\_\_\_  
Andrew H. Young  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Walter H. Clements, Esq.  
Public Arbitrator

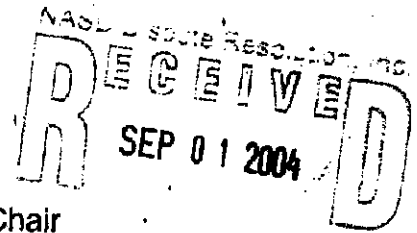
8-25-04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Hal H. Smith, II  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

\_\_\_\_\_  
(For NASD office use only)



**ARBITRATION PANEL**

Andrew H. Young - Public Arbitrator, Presiding Chair  
Walter H. Clements, Esq. - Public Arbitrator  
Hal H. Smith, II - Non-Public Arbitrator

**Concurring Arbitrators:**

\_\_\_\_\_  
Andrew H. Young  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Walter H. Clements, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Hal H. Smith, II  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)