

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Rudi Zubere, Claimant v. Merrill Lynch, Pierce, Fenner and Smith, Inc., Respondent

Case Number: 03-03056

Hearing Site: San Francisco, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Val D. Hornstein, Esq.
Hornstein Law Offices
San Francisco, California

For Respondent:

Johnathan Wehle, Esq.
Office of General Counsel
Merrill Lynch, Pierce, Fenner and Smith, Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: April 24, 2003

Claimant's Uniform Submission Agreement signed: April 22, 2003

Statement of Answer filed by Respondent: August 6, 2003

Respondent's Uniform Submission Agreement signed: August 5, 2003

CASE SUMMARY

Claimant alleges negligence, breach of fiduciary duty, failure to supervise, fraud and deceit, and violation of the following: California Civil Code §15731, California Corporate Securities Act §25400 and §2550, Federal Securities Laws, and California Elder Abuse and Dependent Adult Civil Protection Act. Claimant's allegations involve transactions in unspecified high risk securities in his margin account.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and set forth various affirmative defenses.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, unspecified punitive damages, disgorgement and restitution of all earnings, profits, commissions, compensation and benefits, rescission, lost opportunity costs, pre- and post-judgment interest, treble damages, and costs including attorney's fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

On April 22, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 27, 2003, Respondent's counsel signed a Waiver Agreement on Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On February 4, 2004, Claimant made a motion to amend the Statement of Claim. On March 25, 2004, a telephonic pre-hearing conference was held, attended by all party representatives and the Panel. The motion was denied.

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, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant the sum of \$104,000.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant the sum of \$27,000.00 in costs.
- 3) Respondent is liable to and shall pay Claimant the sum of \$65,000.00 in attorney's fees.
- 4) Respondent will bear its own costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to 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	waived
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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 and Smith, Inc is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00
Total Member Fees	= \$ 4,450.00

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:

(1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00
Pre-hearing conference:

January 20, 2004 1 session

(2) Pre-hearing conference sessions with the Panel @ \$1000.00/session = \$ 2,000.00
Pre-hearing conferences:

October 27, 2003 1 session

March 25, 2004 1 session

(9) Hearing sessions @ \$1000.00/session = \$ 9,000.00
Hearings:

May 3, 2004 2 sessions

May 4, 2004 2 sessions

May 5, 2004 2 sessions

May 6, 2004 3 sessions

Total Forum Fees = \$11,450.00

The Panel assessed the entire \$11,450 in forum fees to Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.

Fee Summary

1. Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc., is charged with the following fees and costs:

Member Fees = \$ 4,450.00

Forum Fees = \$11,450.00

Total Fees = \$15,900.00

Less payments = \$ (4,450.00)

Balance Due NASD Dispute Resolution = \$ 11,450.00

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

Gerald E. Ambinder	-	Public Arbitrator, Presiding Chair
Armin Rosencranz	-	Public Arbitrator
Bryan W. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gerald E. Ambinder
Chair, Public Arbitrator

Signature Date

Armin Rosencranz
Public Arbitrator

Signature Date

Bryan W. Brown
Non-Public Arbitrator

Signature Date

Date of Service

Gerald E. Ambinder	-	Public Arbitrator, Presiding Chair
Armin Rosencranz	-	Public Arbitrator
Bryan W. Brown	-	Non-Public Arbitrator

Gerald E. Arbinder
Chair, Public Arbitrator

Signature Date

Armin Rosencranz
Public Arbitrator

Signature Date

By James W. Brown

Bryan W. Brown
Non-Public Arbitrator

Signature Date 5/25/09

5/28/04
Date of Service

ARBITRATION PANEL

Gerald E. Ambinder	-	Public Arbitrator, Presiding Chair
Armin Rosencranz	-	Public Arbitrator
Bryan W. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Gerald E. Ambinder
Chair, Public Arbitrator

MAY 25 2004

Signature Date

Armin Rosencranz
Public Arbitrator

Signature Date

Bryan W. Brown
Non-Public Arbitrator

Signature Date

5/28/04
Date of Service

ARBITRATION PANEL

Gerald E. Ambinder	-	Public Arbitrator, Presiding Chair
Armin Rosencranz	-	Public Arbitrator
Bryan W. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gerald E. Ambinder
Chair, Public Arbitrator

Signature Date



Armin Rosencranz
Public Arbitrator

28 May '04

Signature Date

Bryan W. Brown
Non-Public Arbitrator

Signature Date

5/28/04

Date of Service