

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Gregory T. Lano (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kevin F. Early (Respondents)

Case Number: 03-03375

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customer v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Gregory T. Lano ("Lano") hereinafter referred to as "Claimant": Edward C. Cooley, Esq., Giarrusso, Norton, Cooley & McGlone, P.C., Quincy, MA.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Kevin F. Early ("Early") hereinafter collectively referred to as "Respondents": Michael A. Fitzhugh, Esq., Fitzhugh, Parker & Alvaro, LLP, Boston, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: May 7, 2003.

Claimant signed the Uniform Submission Agreement: April 25, 2003.

Joint Statement of Answer filed by Respondents on or about: September 11, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: November 25, 2003.

Respondent Early signed the Uniform Submission Agreement: November 24, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; negligence; breach of fiduciary duty; breach of the covenant of good faith and fair dealing; and violations of Massachusetts General Laws Chapter 93A. Claimant's claim involved common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$150,000.00; punitive damages in the amount of \$300,000.00; costs; attorneys' fees; witness and production fees; and other case-related costs.

Respondents requested that the claims be dismissed in their entirety and the damages as alleged in the Statement of Claim be denied, and that Respondents be awarded costs and reasonable attorneys' fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents made motions for a directed verdict during opening statements and closing arguments. The Panel held executive sessions for each motion and unanimously denied each motion.

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.

### **AWARD**

After considering the pleadings, and 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. Claimant's claims are denied in their entirety.
2. 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.

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

**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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 11, 2004 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: December 23, 2003 1 session	
February 26, 2004 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
Hearing Date: May 25, 2004 2 sessions	
Total Forum Fees	= \$4,950.00

1. The Panel has assessed \$1,650.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,650.00 of the forum fees against Respondent MLPFS.
3. The Panel has assessed \$1,650.00 of the forum fees against Respondent Early.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,650.00
Total Fees	= \$1,950.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 525.00
2. Respondent MLPFS is solely liable for:	
Member Fees	= \$5,200.00
Forum Fees	= \$1,650.00
Total Fees	= \$6,850.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$1,650.00
3. Respondent Early is solely liable for:	
Forum Fees	= \$1,650.00
Total Fees	= \$1,650.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,650.00

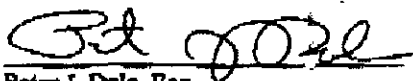
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Peter J. Dale, Esq.	-	Public Arbitrator, Presiding Chair
William R. Harding, CPA	-	Public Arbitrator
Linda A. Gelfand	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
Peter J. Dale, Esq.  
Public Arbitrator, Presiding Chairperson

6-3-04  
Signature Date

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William R. Harding, CPA  
Public Arbitrator

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

\_\_\_\_\_  
Linda A. Gelfand  
Non-Public Arbitrator

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Signature Date

June 9, 2004

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Date of Service (For NASD Dispute Resolution use only)

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JUNE 9, 2004

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