

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Edward W. Bigler and Sandra K. Bigler, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Philip J. Loftus, John P. Hughie and William D. Brewer, Respondents

Case Number: 03-03548

Hearing Site: Portland, Oregon

Nature of the Dispute: Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimants:

James C. Loy, Esq.
Attorney at Law
Portland, Oregon

For Respondents:

Justin C. Sawyer, Esq.
Miller Nash LLP
Portland, Oregon

CASE INFORMATION

Statement of Claim filed: May 9, 2003

Amended Statement of Claim filed: July 30, 2003

Claimants' Joint Uniform Submission Agreement signed: May 16, 2003

Joint Statement of Answer filed by Respondents: September 18, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: June 19, 2003

Respondent Philip J. Loftus' Uniform Submission Agreement signed: July 29, 2003

Respondent John P. Hughie's Uniform Submission Agreement signed: October 13, 2003

Respondent William D. Brewer's Uniform Submission Agreement signed: October 8, 2003

CASE SUMMARY

In their Initial and Amended Statements of Claim, Claimants alleged negligence, negligent supervision, breach of fiduciary duty, and breach of contract involving investments in Exodus Communications, Microsoft Corporation, Sun Microsystems and EMC.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statements of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of \$705,000.00, punitive damages in the sum of \$500,000.00, pre-judgment interest in the sum of \$135,000.00, post-judgment interest at a rate of 9% per annum, costs in the sum of \$1,867.00, expert witness fees in the sum of \$3,000.00, and attorney's fees.

Respondents requested dismissal of the Claimants' Initial and Amended Statements of Claim in their entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 22, 2005, Respondents moved the Panel to dismiss the Statement of Claim of Claimant Sandra Bigler. On April 25, 2005, a telephonic pre-hearing conference was held, attended by Parties and the Panel. After due deliberation in an executive session, the Panel denied the motion.

At the hearing, Respondents moved the Panel to dismiss the Statement of Claim against Respondent William Brewer. The Panel granted the motion.

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

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Philip J. Loftus' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Philip J. Loftus must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John P. Hughie's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent John P. Hughie must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent William D. Brewster's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent William D. Brewster must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 6) 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	= \$ 500.00
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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 Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

June 23-25, 2004, adjournment requested by all Parties	Waived
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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:

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences:	
December 03, 2003	1 session
December 03, 2004	1 session
April 25, 2005	1 session

(6) Hearing sessions @ \$1,200.00/session	= \$7,200.00
Hearings:	
April 26, 2005	2 sessions
April 27, 2005	2 sessions
April 28, 2005	2 sessions

Total Forum Fees	= \$10,800.00
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1. The Panel assessed \$8,100.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$2,700.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 8,100.00
Total Fees	= \$ 8,600.00
Less payments	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 6,900.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(9,190.00)
Refund Due Merrill Lynch, Pierce, Fenner & Smith Incorporated	= \$ (640.00)

3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,700.00
Less Payments by Merrill Lynch, Pierce, Fenner & Smith Incorporated	= \$(2,700.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

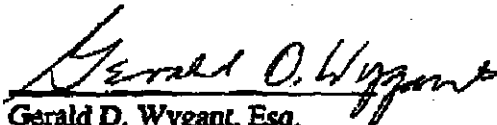
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Gerald D. Wygant, Esq.
F. Richard Middaugh
R. Lee Smith

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

Concurring Arbitrators' Signatures


Gerald D. Wygant, Esq.
Chair, Public Arbitrator

MAY 2, 2005
Signature Date

F. Richard Middaugh
Public Arbitrator

Signature Date

R. Lee Smith
Non-Public Arbitrator

Signature Date

5/4/05
Date of Service

ARBITRATION PANEL

Gerald D. Wygant, Esq.
F. Richard Middaugh
R. Lee Smith

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-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gerald D. Wygant, Esq.
Chair, Public Arbitrator

Signature Date

F. Richard Middaugh
Public Arbitrator

Signature Date



R. Lee Smith
Non-Public Arbitrator

5-3-05

Signature Date

5/4/05

Date of Service

ARBITRATION PANEL


Gerald D. Wygant, Esq.
F. Richard Middaugh
R. Lee Smith

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gerald D. Wygant, Esq.
Chair, Public Arbitrator

Signature Date


F. Richard Middaugh
Public Arbitrator

05/06/05
Signature Date

R. Lee Smith
Non-Public Arbitrator

Signature Date

Date of Service