
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Howard Elliot

Case Number: 03-03573

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Howard Elliot, hereinafter referred to as "Claimant": William Jemison Mims, Jr., Esq., Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Bennett Falk, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 13, 2003.

Claimant signed the Uniform Submission Agreement: May 3, 2003.

Statement of Answer filed by Respondent on or about: August 1, 2003.

Respondent signed the Uniform Submission Agreement: June 12, 2003.

Motion for More Definite Statement filed by Respondent on or about: August 1, 2003.

Claimant's Response to Motion for More Definite Statement filed on or about: September 19, 2003.

Motion in Limine filed by Respondent on or about: June 15, 2004.

Claimant responded to Motion in Limine ore tenus at the hearing on or about: June 15, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, fraud, negligent misrepresentation, negligence, and violations of Blue Sky Laws, Section 10(b) of the Exchange Act, and Rule 10b-5. The causes of action relate to the purchase and sale of stock in Exodus Communication, Inc. in Claimant's account.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$49,736.00, punitive damages in an amount to be determined from evidence accumulated during discovery, interest, costs, including expert witness fees, attorneys' fees, and such other damages the undersigned arbitrators (the "Panel") deemed appropriate.

Respondent requested dismissal of the Statement of Claim in its entirety and for such further relief as the Panel deemed just and proper, including assessment of all forum fees against Claimant, and reimbursement of attorneys' fees and costs under Florida State Statutes 517.105 and 517.211(6) in a court of competent jurisdiction.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 4, 2003, the Panel issued an order denying Respondent's Motion for More Definite Statement.

On or about June 18, 2004, the Panel issued an order denying Respondent's Motion in Limine.

The parties in this matter have agreed that the Award may be entered in counterpart copies or that a signed, handwritten 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:

Claimant's claims for relief, including claims made under Section 10(b) of the Exchange Act, Rule 10b-5, and Blue Sky Laws, and request for punitive damages, are denied.

All parties will bear their own attorneys' fees and costs.

Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 175.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a member firm and a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 1,000.00</u>
Total Member Fees	= \$ 2,625.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four hours or less.

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: February 12, 2004 1 session	

Three (3) Pre-hearing sessions with the Panel @ \$600.00	= \$ 1,800.00
Pre-hearing conferences: December 9, 2003 1 session	
April 7, 2004 1 session	
April 30, 2004 1 session	

Eight (8) Hearing Sessions with the Panel @ \$600.00	= \$ 4,800.00
Hearing sessions: June 15, 2004 2 sessions	
June 16, 2004 2 sessions	
June 17, 2004 2 sessions	
June 18, 2004 2 sessions	

Total Forum Fees	= \$ 7,050.00
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The Panel has assessed \$3,525.00 of the forum fees to Claimant.

The Panel has assessed \$3,525.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	<u>= \$ 3,525.00</u>
Total Fees	= \$ 3,700.00
<u>Less Payments</u>	<u>= \$ 1,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,100.00

Respondent is solely liable for:

Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	<u>= \$ 3,525.00</u>
Total Fees	= \$ 6,150.00
<u>Less Payments</u>	<u>= \$ 2,625.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,525.00

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

ARBITRATION PANEL

William P. Loughnane	-	Public Arbitrator, Presiding Chairperson
Patricia J. Murphy, Esq.	-	Public Arbitrator
Bruce M. Alster	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
William P. Loughnane
Public Arbitrator, Presiding Chairperson

June 28, 2004
Signature Date

_____/s/_____
Patricia J. Murphy, Esq.
Public Arbitrator

June 24, 2004
Signature Date

_____/s/_____
Bruce M. Alster
Non-Public Arbitrator

June 28, 2004
Signature Date

June 28, 2004
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-03573
Award Page 4 of 5

Administrative Costs

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Patricia J. Murphy, Esq.
Bruce M. Alster

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures


William P. Loughnane
Public Arbitrator, Presiding Chairperson

6/28/2004
Signature Date

Patricia J. Murphy, Esq.
Public Arbitrator

Signature Date

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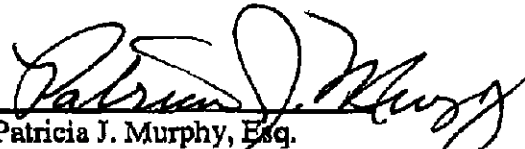
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Patricia J. Murphy, Esq.	-	Public Arbitrator
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Concurring Arbitrators' Signatures

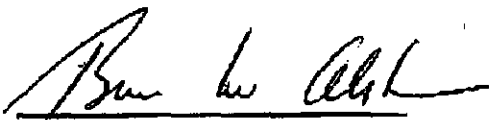
William P. Loughnane
Public Arbitrator, Presiding Chairperson

Signature Date


Patricia J. Murphy, Esq.
Public Arbitrator

6/24/04
Signature Date

NASD Dispute Resolution
Arbitration No. 03-03573
Award Page 5 of 5



Bruce M. Alster
Non-Public Arbitrator



Signature Date

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