

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Donald J. Townsend, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Christopher M. Rossi, Respondents

Case Number: 03-03824

Hearing Site: Honolulu, Hawaii

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

REPRESENTATION OF PARTIES

For Claimant:

Donald J. Townsend
In Pro Per
Honolulu, Hawaii

For Respondents:

Jeffrey S. Portnoy, Esq.
Theodore D.C. Young, Esq.
Cades Schutte, LLP
Honolulu, Hawaii

CASE INFORMATION

Statement of Claim filed: May 21, 2003

Amended Statement of Claim filed: February 2, 2004

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

Joint Statement of Answer to Statement of Claim filed by Respondents: September 8, 2003

Joint Statement of Answer to Amended Statement of Claim filed by Respondents:
March 26, 2004

Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: September 2, 2003

Respondent Christopher M. Rossi's Uniform Submission Agreement signed:
September 26, 2003

CASE SUMMARY

In his Amended Statement of Claim, Claimant alleged "common law fraudulent misrepresentation, fraudulent inducement, fraudulent non-disclosure, on-going fraud in the relationship, stock churning, unsuitability, breach of contract, negligence, negligent supervision, violations of the anti-fraud provisions of the federal securities laws (Section 408 of the Securities and Exchange Act, Section 10b-5b) and the Hawai'i (HRS Section 485-25) and Illinois Securities laws, violation of the Illinois Deceptive Business Practices Act, breach of fiduciary duty, NASD Rule 2310, NYSE Rule 405(1), NASD Rule 2510, conflict of interest and the intentional and negligent infliction of emotional distress." The dispute involved unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

In his Initial Statement of Claim, Claimant requested compensatory damages in the amount of \$351,000.00, unspecified punitive damages, attorney's fees, and costs. In his Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$351,000.00, unspecified punitive damages, treble damages, interest at the rate of 10%, and attorney's fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

On March 16, 2004, the Panel granted Claimant's request to file an Amended Statement of Claim. The Amended Statement of Claim was deemed filed as of March 17, 2004.

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

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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

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, Inc. is a party and the following fees are assessed:

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

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/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Chair @ \$450.00/session = \$ 450.00
Pre-hearing conference: December 30, 2003 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00
Pre-hearing conferences: November 12, 2003 1 session
March 16, 2004 1 session

Two (2) Hearing sessions @ \$1,200.00/session = \$ 2,400.00
Hearing: April 14, 2004 2 sessions

Total Forum Fees = \$ 5,250.00

1. The Panel assessed \$3,025.00 of the forum fees to Claimant Donald J. Townsend.
2. The Panel assessed \$2,225.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Christopher M. Rossi.

Fee Summary

1. Claimant Donald J. Townsend is charged with the following fees and costs:

<u>Forum Fees</u>	= \$ 3,025.00
Balance Due NASD Dispute Resolution	= \$ 3,025.00

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

Member Fees	= \$ 8,550.00
<u>Less payments</u>	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Christopher M. Rossi are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$ 2,225.00
Balance Due NASD Dispute Resolution	= \$ 2,225.00

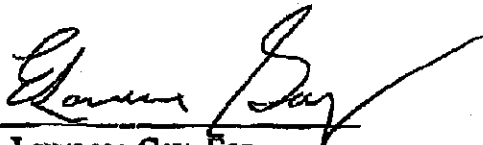
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

E. Laurence Gay, Esq.
Andrew Beaman, Esq.
John M. Miyamasu

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


E. Laurence Gay, Esq.
Chair, Public Arbitrator

4/22/04
Signature Date

Andrew Beaman, Esq.
Public Arbitrator

Signature Date

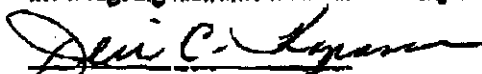
John M. Miyamasu
Non-Public Arbitrator

Signature Date

State of Hawaii ss:

City and County of Honolulu

On this 22nd day of April, 2004, before me personally appeared
E. Laurence Gay to me known and known before me to be the individual described in and
the foregoing instrument and he/she duly acknowledged that he/she executed the same.


Notary Public, State of Hawaii
My commission expires: 9-23-07



4/23/04
Date of Service

ARBITRATION PANEL

E. Laurence Gay, Esq.
Andrew Beaman, Esq.
John M. Miyamasu

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

E. Laurence Gay, Esq.
Chair, Public Arbitrator

Signature Date

Andrew Beaman, Esq.
Public Arbitrator

Signature Date


John M. Miyamasu
Non-Public Arbitrator

4/22/04
Signature Date

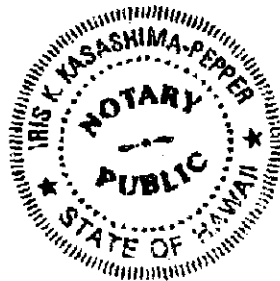
State of Hawaii ss:

City and County of Honolulu

On this 22nd day of April, 2004 before me personally appeared
JOHN M. MIYAMASU to me known and known before me to be the individual described in and who executed
the foregoing instrument and he/she duly acknowledged that he/she executed the same.


Notary Public, State of Hawaii
My commission expires June 17, 2004

4/23/04
Date of Service



ARBITRATION PANEL

E. Laurence Gay, Esq.	-	Public Arbitrator, Presiding Chair
Andrew Beaman, Esq.	-	Public Arbitrator
John M. Miyamasu	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

E. Laurence Gay, Esq.
Chair, Public Arbitrator

Signature Date



Andrew Beaman, Esq.
Public Arbitrator

4/22/04

Signature Date

John M. Miyamasu
Non-Public Arbitrator

Signature Date

State of Hawaii ss:

City and County of Honolulu

On this 22nd day of April, 2004, before me personally appeared Andrew Beaman to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.


- Therese M. P. Ng
Notary Public, State of Hawaii
My commission expires: 12/2/04

Date of Service