

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of Claimant

Virgil Barber, on Behalf of His Individual
Retirement Account

vs.

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Joseph Churchill Wise

Case Number: 03-05215
Hearing Site: Houston, Texas

NATURE OF CASE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Virgil Barber, on Behalf of His Individual Retirement Account ("Claimant") was represented by Herbert E. Pounds, Jr., Esq., Herbert E. Pounds, Jr., P.C., San Antonio, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Joseph Churchill Wise ("Wise"), hereinafter collectively referred to as "Respondents," were represented by Jack D. Ballard, Esq., The Ballard Law Firm, Houston, Texas.

CASE INFORMATION

The Claimant's Statement of Claim was filed on or about July 15, 2003. The Submission Agreement of Claimant was signed on or about July 15, 2003.

The Joint Statement of Answer for Respondents was filed on or about October 17, 2003. The Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about October 17, 2003. The Submission Agreement of Respondent, Joseph Churchill Wise, was signed on or about February 25, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of warranty, promissory estoppel, consumer protection and deceptive trade practices, violation of state securities statutes, violation of Section 27.01 of Texas Business and Commerce Code, common law fraud, breach of fiduciary duty, negligence and failure to supervise. Claimant requested all sums lost in the account, plus additionally or alternatively all lost opportunities, rescission of any or all transactions, plus additionally or alternatively, statutory damages, punitive damages, pre-award and pre-judgment interest and costs. The causes of action relate to unspecified stocks held in Claimant's accounts at Merrill Lynch.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: (i) to the extent Claimant incurred any damages, such damages were attributable to market conditions and not to any acts or omissions of Respondents; (ii) estoppel (iii) waiver; (iv) ratification; (v) commercial reasonableness; (vi) assumption of risks; (vii) limitations; (viii) compliance with Exchange rules and regulations; (ix) laches; (x) failure to mitigate; (xi) contributory negligence; and (xii) that an award of punitive or exemplary damages would be in violation of the United States and Texas Constitutions.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$100,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees and expungement.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 18, 2004, Claimant and Respondents reached an agreement to settle the claims asserted in the arbitration proceeding, and each of the Respondents and Claimant have executed a General Release and Settlement Agreement.

In light of the settlement of the claims, Claimant and Respondents request that all claims in this case be dismissed with prejudice and Respondents request and Claimant has agreed to not oppose the expungement of Claimant's complaint from the CRD record of Joseph Churchill Wise.

This award was prepared, in part, based on a proposed award document submitted by Respondents.

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. In either case, the parties have agreed to receive conformed copies of the award while the original remains on file with the NASD Dispute Resolution (the "NASD").

AWARD

Pursuant to the parties' agreement, and after considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

1. All claims in this case are dismissed with prejudice pursuant to the parties' settlement agreement;
2. That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses, including attorneys' fees, incurred in this matter;
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent, Joseph Churchill Wise's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to the NASD Notice to Members 99-09, Respondent, Joseph Churchill Wise, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
4. That any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 225

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. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member Surcharge	= \$ 1,100
Pre-Hearing Process Fee	= \$ 750
Hearing Process Fee	= \$ 1,700
<u>Total Member Fees</u>	<u>= \$ 3,550</u>

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$750/session = \$ 750
Pre-hearing conference: February 26, 2004 1 session

<u>Total Forum Fees</u>	<u>= \$ 750</u>
-------------------------	-----------------

The Arbitration Panel has assessed \$ 375.00 of the forum fees against Claimant.

The Arbitration Panel has assessed \$ 375.00 of the forum fees jointly and severally against Merrill Lynch and Wise.

Fee Summary

Claimant, Virgil Barber, be and hereby is liable for:

Initial Filing Fee	= \$ 225
<u>Forum Fee</u>	<u>= \$ 375</u>
<u>Total Fees</u>	<u>= \$ 600</u>
<u>Less payments</u>	<u>= \$ 1,425</u>
<u>Refund Due to Claimant</u>	<u>= \$ 825</u>

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

<u>Member Fees</u>	<u>= \$ 3,550</u>
<u>Total Fees</u>	<u>= \$ 3,550</u>
<u>Less payments</u>	<u>= \$ 3,550</u>
<u>Balance Due NASD Dispute Resolution</u>	<u>= \$ 0</u>

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Joseph Churchill Wise, be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 375</u>
-------------------	-----------------

NASD Dispute Resolution
Arbitration No. 03-05215
Stipulated Award Page 4 of 4

Total Fees	= \$	375
Less Payments	= \$	0
Balance Due NASD Dispute Resolution, Inc.	= \$	375

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

ARBITRATION PANEL

Howard J. Siegel - Public Arbitrator, Presiding Chair
Charles Chester - Public Arbitrator
Stanley H. Frank - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Howard J. Siegel
Howard J. Siegel
Public Arbitrator, Presiding Chair

December 20, 2004
Signature Date

/s/ Charles Chester
Charles Chester
Public Arbitrator

December 17, 2004
Signature Date

/s/ Stanley H. Frank
Stanley H. Frank
Non-Public Arbitrator

December 17, 2004
Signature Date

December 20, 2004
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-05215
Stipulated Award Page 4 of 4

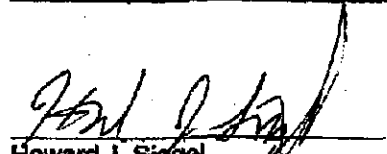
Total Fees	= \$ 375
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 375

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

ARBITRATION PANEL

Howard J. Siegel - Public Arbitrator, Presiding Chair
Charles Chester - Public Arbitrator
Stanley H. Frank - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Howard J. Siegel
Public Arbitrator, Presiding Chair

12/20/04
Signature Date

Charles Chester
Public Arbitrator

Signature Date

Stanley H. Frank
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-05215
Stipulated Award Page 4 of 4

Total Fee	= \$ 375
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 375

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

ARBITRATION PANEL

Howard J. Siegel - Public Arbitrator, Presiding Chair
Charles Chester - Public Arbitrator
Stanley H. Frank - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Howard J. Siegel
Public Arbitrator, Presiding Chair

Signature Date

Charles Chester
Charles Chester
Public Arbitrator

12/17/04
Signature Date

Stanley H. Frank
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-05215
Stipulated Award Page 4 of 4

Total Fees	= \$ 375
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 375

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10390(g) of the Code.

ARBITRATION PANEL

Howard J. Siegel - Public Arbitrator, Presiding Chair
Charles Chester - Public Arbitrator
Stanley H. Frank - Non-Public Arbitrator


Concurring Arbitrators' Signatures

Howard J. Siegel
Public Arbitrator, Presiding Chair

Signature Date

Charles Chester
Public Arbitrator

Signature Date



Stanley H. Frank
Non-Public Arbitrator

12/17/04

Signature Date

Date of Service (For NASD office use only)