

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Tom I. McFerrin

and

Case Number: 03-05239
Hearing Site: Houston, Texas

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

NATURE OF DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

Tom I. McFerrin ("**Claimant**") was represented by Russell C. Silvergate, Esq., Dickenson, Murphy, Rex and Sloan, Boca Raton, Florida.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Merrill Lynch**") was represented by Judith A. Meyer, Esq., Ogden, Gibson, White, Broocks & Longoria, LLP., Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about July 18, 2003. The Uniform Submission Agreement of Claimant, Tom I. McFerrin, was signed on or about June 28, 2003.

The Statement of Answer was filed by Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., on or about September 19, 2003. The Uniform Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about September 16, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, misrepresentations, omissions, and negligence. The causes of action related to the purchase of several unspecified mutual funds.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., denied the allegations made in the Statement of Claim and asserted defenses including the following: ratification; failure

to mitigate; failure to state a claim upon which relief can be granted; assumption of risk; and good faith and commercial reasonableness.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$365,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees, and that all reference to this matter be expunged from the CRD record of Vincent J. Fertitta, Jr.

OTHER ISSUES CONSIDERED & DECIDED

Claimant and Respondent advised NASD that on or about January 11, 2005, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement. Claimant stipulates to entry of an award expunging the customer complaint from Vincent J. Fertitta, Jr.'s registration records maintained by NASD Central Registration Depository ("CRD").

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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.) Claimant's claims against Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., are dismissed with prejudice;
- 2.) The panel recommends the expungement of all references to the above captioned arbitration from Vincent J. Fertitta, Jr.'s registration record maintained by NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Vincent J.

Fertitta, Jr., must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any and all relief not specifically addressed herein, including attorneys' fees and costs is denied and all claims are dismissed with prejudice.

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

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

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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: February 9, 2004 1 session	
Total Forum Fees	= \$1,125.00

The Arbitration Panel has assessed \$562.50 of the forum fees to Tom I. McFerrin.

The Arbitration Panel has assessed \$562.50 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

Claimant, Tom I. McFerrin, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Retention of Hearing Session Deposit	= \$ 562.50
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$.00

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 5,762.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Walton L. Huff - Public Arbitrator, Presiding Chair
Sherry Wetsch - Public Arbitrator
Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Walton L. Huff
Walton L. Huff
Public Arbitrator, Presiding Chair

May 27, 2005
Signature Date

/s/ Sherry Wetsch
Sherry Wetsch
Public Arbitrator

May 31, 2005
Signature Date

/s/ Larry J. Sklar
Larry J. Sklar
Non-Public Arbitrator

May 31, 2005
Signature Date

June 1, 2005
Date of Service (For NASD office use only)

Fee Summary

Claimant, Tom I. McFerrin, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.00
<u>Retention of Hearing Session Deposit</u>	<u>= \$ 562.00</u>
Total Fees	= \$ 1,425.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$.00

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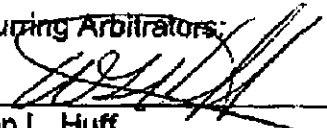
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Sherry Wetsch - Public Arbitrator
Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:


Walton L. Huff
Public Arbitrator, Presiding Chair

5/27/05
Signature Date

Sherry Wetsch
Public Arbitrator

Signature Date

Larry J. Sklar
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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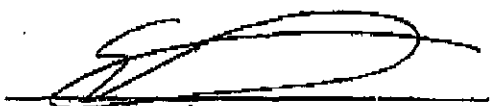
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Sherry Wetsch - Public Arbitrator

Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

Walton L. Huff
Public Arbitrator, Presiding Chair


Sherry Wetsch
Public Arbitrator

Signature Date

5-31-05
Signature Date

Larry J. Sklar
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Fee Summary

Claimant, Tom L. McFerrin, is liable for:

Initial Filing Fee	= \$ 300.00
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Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

Walton L. Huff
Public Arbitrator, Presiding Chair

Signature Date

Sherry Wetsch
Public Arbitrator

Signature Date



Larry J. Sklar
Non-Public Arbitrator



Signature Date

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