

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Deward Smith

Lorene Smith

Case Number: 03-05554

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Robert Louis Reid, Jr.

Alison Garrett Reid

Nicholas-Applegate Capital Management, LLC

Hearing Site: Raleigh, NC

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

REPRESENTATION OF PARTIES

Claimants, Deward Smith and Lorene Smith, hereinafter collectively referred to as "Claimants", were represented by Neil A. Riemann, Esq. and J. Anthony Penry, Esq., Taylor, Penry, Rash & Riemann, PLLC, Raleigh, North Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Robert Louis Reid, Jr. ("Reid") and Alison Garrett Reid ("A. Reid"), were represented by S. Lawrence Polk, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

Respondent, Nicholas-Applegate Capital Management, LLC ("Nicholas-Applegate"), was represented by Donald H. Tucker, Esq., Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, Raleigh, North Carolina.

CASE INFORMATION

Statement of Claim and Consent Order for Referral to Arbitration filed on July 29, 2003.
Claimants signed the Uniform Submission Agreement on July 24, 2003.

Statement of Answer filed by Respondents Merrill Lynch, Reid and A. Reid on October 27, 2003.

Amended Exhibit "C" to Statement of Answer filed by Respondents Merrill Lynch, Reid and A. Reid on April 16, 2004.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on September 8, 2003.

Respondent Reid signed the Uniform Submission Agreement on October 23, 2003.

Respondent A. Reid signed the Uniform Submission Agreement on October 23, 2003.

Respondent Nicholas-Applegate did not file a Statement of Answer or Uniform Submission Agreement with NASD Dispute Resolution.

CASE SUMMARY

In their Statement of Claim, Claimants asserted the following causes of action, among others: breach of contract, fraud, negligence, conversion, and violation of N.C.G.S. 78A-56. The causes of action relate to the purchase and sale of various technology stocks and other unspecified securities.

Unless specifically admitted in their Answer, Respondents Merrill Lynch, Reid and A. Reid denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants' claims are barred by the doctrines of laches, unclean hands, estoppel, setoff and waiver; ratification; contributory negligence; assumption of the risk; failure to mitigate damages; Claimants' claims are barred by the statute of limitations; and failure to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimants requested compensatory damages in an amount to be proved at hearing that is between \$1,000,000.00 and \$3,000,000.00; interest; attorneys' fees; and, other costs.

Respondents Merrill Lynch, Reid and A. Reid requested that the Statement of Claim be dismissed in its entirety, that forum fees be assessed against Claimant, that they be awarded attorneys' fees, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondents Robert Reid's and Alison Reid's Central Registration Depository ("CRD") record.

OTHER ISSUES CONSIDERED AND DECIDED

On December 16, 2003, Claimants dismissed all claims against Respondent Nicholas-Applegate with prejudice.

At the close of Claimant's presentation of evidence and testimony, Respondents made a motion to dismiss Claimant's claims. The Panel denied 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, 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:

1. Respondents Merrill Lynch, Reid and A. Reid are jointly and severally liable to and shall pay

to Claimants the sum of \$305,396.97 in compensatory damages inclusive of interest;

2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein is denied in its entirety.

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	= \$ 500.00
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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. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Forum Fees and Assessments

The Panel has 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 (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$ 1,200.00	= \$ 1,200.00
Pre-hearing conferences: April 12, 2004	1 session

Seven (7) Hearing sessions @ \$ 1,200.00	= \$ 8,400.00
Hearing Dates: October 18, 2004	2 sessions
October 19, 2004	2 sessions
October 20, 2004	2 sessions
October 21, 2004	1 session

Total Forum Fees	= \$ 9,600.00
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1. The Panel has assessed \$ 4,800.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 4,800.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Reid and A. Reid.

Fee Summary

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 5,300.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

2. Respondent Merrill Lynch is assessed and shall pay:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Reid and A. Reid are jointly and severally assessed and shall pay:

Forum Fees	= \$ 4,800.00
Total Fees	= \$ 4,800.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

ARBITRATION PANEL

Virginia S. Carson, Esq.	-	Public Arbitrator, Presiding Chairperson
Houston Spencer Everett, Jr., Esq.	-	Public Arbitrator, Panelist
Thomas C. Borthwick	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Virginia S. Carson

Virginia S. Carson, Esq.
Public Arbitrator, Presiding Chairperson

11/08/04

Signature Date

Houston Spencer Everett, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

Thomas C. Borthwick
Non-Public Arbitrator, Panelist

Signature Date

November 11, 2004

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

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Concurring Arbitrators' Signatures

Virginia S. Carson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

H. Spencer Everett Jr.

Houston Spencer Everett, Jr., Esq.
Public Arbitrator, Panelist

11/5/04

Signature Date

Thomas C. Borthwick
Non-Public Arbitrator, Panelist

Signature Date

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