

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Richard L. Hendricks IRA (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc.
(Respondent)

Case Number: 03-05601

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Customer v. Member.

REPRESENTATION OF PARTIES

Claimant Richard L. Hendricks ("Hendricks") hereinafter referred to as "Claimant" appeared *pro se*.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") hereinafter referred to as "Respondent": Robert B. Baker, Esq., Bingham McCutchen, Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2003.

Claimant signed the Uniform Submission Agreement: July 25, 2003.

Statement of Answer filed by Respondent on or about: October 31, 2003.

Respondent signed the Uniform Submission Agreement: September 17, 2003.

CASE SUMMARY

Claimant asserted the following cause of action: misrepresentation. Claimant's claim involved shares of Tyco International, Inc.

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 \$44,610.00, plus costs in the amount of \$625.00, and other expenses related to the arbitration.

Respondent requested that Claimant's Statement of Claim be dismissed with prejudice; that all forum and other fees and costs be assessed against Claimant; and that Respondent is granted all other and further relief as is deemed just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent made a Motion in Limine to Preclude Extrinsic Evidence Concerning Phua K. Young. After due consideration, the Arbitrator denied the Motion.

Respondent made a Motion for a Directed Finding in its Favor Following Conclusion of Claimant's Case. After due consideration, the Arbitrator denied the Motion.

AWARD

After considering the pleadings, and the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator found that Claimant did not establish entitlement to recovery. He failed to meet his burden of proof on claims of fraud and misrepresentation; therefore, Claimant's claims are denied in their entirety.
2. Respondent is liable for and shall pay to Claimant the sum of \$175.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein is denied.

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	= \$175.00
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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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with

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

One (1) Pre-hearing session with the sole arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: March 23, 2004 1 session	
Two (2) Hearing sessions @ \$450.00	= \$ 900.00
Hearing Date: May 19, 2004 2 sessions	
Total Forum Fees	= \$1,350.00

1. The Arbitrator has assessed \$1,350.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Total Fees	= \$ 175.00
Less payments	= \$ 625.00
Refund Due Claimant	= \$ 450.00

As stated in the "Award" section above, Respondent is liable for and shall reimburse Claimant for the \$175.00 filing fee.

2. Respondent is solely liable for:

Member Fees	= \$2,625.00
Forum Fees	= \$1,350.00
Total Fees	= \$3,975.00
Less payments	= \$1,625.00
Balance Due NASD Dispute Resolution	= \$2,350.00

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

ARBITRATOR

Brian M. Cullen, Esq.

- Sole Public Arbitrator

Arbitrator's Signature

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



Brian M. Cullen, Esq.
Sole Public Arbitrator

6/8/04
Signature Date

June 9, 2004

Date of Service (For NASD Dispute Resolution use only)