

Amended Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Cynthia J. Webb, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kieran T. Maloney, Respondents

Case Number: 03-05797

Hearing Site: San Diego, California

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

REPRESENTATION OF PARTIES

For Claimant:

Arthur S. Leider
Investors Arbitration Specialists, Inc.
San Diego, California

For Respondents:

James P. Delphey, Esq.
Robert M. Taylor, Esq.
Seltzer Caplan McMahon Vitek
San Diego, California

CASE INFORMATION

Statement of Claim filed: August 8, 2003

Claimant's Revised Prayer for Damages filed: July 21, 2004

Claimant's Uniform Submission Agreement signed: April 2, 2003

Joint Statement of Answer filed by Respondents: December 12, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: October 23, 2003

Respondent Kieran T. Maloney's Uniform Submission Agreement signed: December 9, 2003

CASE SUMMARY

Claimant alleged breach of fiduciary duty, fraudulent and negligent misrepresentations, and negligence. Claimant's allegations concerned the management of an investment account comprised of bonds and common stock in various technology companies, including America Online, Inc., Gilat Satellite Networks, Ltd., and Network Appliance, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Initial Statement of Claim, Claimant requested compensatory damages of \$200,000.00, punitive damages of \$300,000.00, unspecified pre- and post judgment interest, and costs, attorney's fees and forum fees.

In Claimant's Revised Prayer for Damages, Claimant reduced the amount of compensatory damages requested to \$165,890.02, and requested pre judgment interest from March 4, 1999 and reimbursement for commissions and fees paid by Claimant in the amount of \$44,849.46.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the Claim from Kieran T. Maloney's Central Registration Depository (CRD) records, and costs, including attorney's fees and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

On August 3, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On July 21, 2004, Claimant filed a Revised Prayer For Damages pursuant to the NASD Code of Arbitration Procedure Rule 10328(b).

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, the 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) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Kieran T. Maloney's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Kieran T. Maloney obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure (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	= \$ 300.00
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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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

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 or the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: June 21, 2004 1 session	
1 Pre-hearing conference session with the Panel @ \$ 1,125.00/session	= \$1,125.00
Pre-hearing conference: February 17, 2004 1 session	
(6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearings: August 3, 2004 2 sessions	
August 4, 2004 2 sessions	
August 5, 2004 2 sessions	
Total Forum Fees	= \$ 8,325.00

1. The Panel assessed \$4,162.50 of the forum fees to Claimant.
2. The Panel assessed \$4,162.50 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Administrative cost assessed to Claimant: =\$ 15.00

Fee Summary

1. Claimant is charged with the following fees and costs:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,162.50
Administrative Costs	= \$ 15.00
Total Fees	= \$ 4,477.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 3,052.00

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

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kieran T. Maloney are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 4,162.50</u>
Total Fees	= \$ 4,162.50
<u>Less payments by Merrill Lynch, Pierce, Fenner & Smith, Inc.</u>	<u>= \$(8,325.00)</u>
Refund Due Merrill Lynch, Pierce, Fenner & Smith, Inc.	= \$(4,162.50)

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.

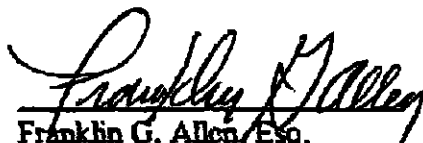
ARBITRATION PANEL

Katherine Jane Morris	-	Public Arbitrator, Presiding Chair
Franklin G. Allen, Esq.	-	Public Arbitrator
Lisa M. Roth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Katherine Jane Morris
Chair, Public Arbitrator

8/11/04
Signature Date


Franklin G. Allen, Esq.
Public Arbitrator

8-10-2004
Signature Date

Lisa M. Roth
Non-Public Arbitrator

Signature Date

9/8/04
Date of Service

ARBITRATION PANEL

Katherine Jane Morris	-	Public Arbitrator, Presiding Chair
Franklin G. Allen, Esq.	-	Public Arbitrator
Lisa M. Roth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Katherine Jane Morris
Chair, Public Arbitrator

Signature Date

Franklin G. Allen, Esq.
Public Arbitrator

Signature Date



Lisa M. Roth
Non-Public Arbitrator

9/9/04

Signature Date

Date of Service