

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Thomas L. Redman and Jana L. Redman, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent

Case Number: 03-05822

Hearing Site: Seattle, Washington

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Wm. Jemison Mims, Jr., Esq.
Levin, Papantonio, Thomas
Mitchell, Echner & Proctor
Pensacola, Florida

For Respondent:

Bruce W. Day, Esq.
Day Edwards Propester &
Christensen
Oklahoma City, Oklahoma

CASE INFORMATION

Statement of Claim filed: August 11, 2003

Amended Statement of Claim filed: March 25, 2004

Claimants' Joint Uniform Submission Agreement signed: July 2, 2003

Statement of Answer and Motion for More Definite Statement filed: October 17, 2003

Statement of Answer to Amended Statement of Claim filed: November 9, 2004

Respondent's Uniform Submission Agreement signed: Undated

CASE SUMMARY

In their Initial and Amended Statements of Claim, Claimants alleged breach of fiduciary duty, negligence, violation of Blue Sky Laws, fraud, and negligent misrepresentation involving the purchase of Infospace stock.

Respondent denied the allegations of wrongdoing as set forth in the Claimants' Initial and Amended Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested unspecified compensatory damages, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Initial and Amended Statements of Claim in their entirety and that the costs and fees incurred in this action be assessed entirely to Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant Jana L. Redman did not attend the hearing.

On or about October 17, 2003, Respondent filed a Motion for More Definite Statement. On or about October 24, 2003, Respondent moved the Panel to Strike references to the "Dinallo Affidavit" and to regulatory settlements entered into by Merrill Lynch from the Statement of Claim. On January 26, 2004, a telephonic hearing was held, attended by the Parties and the Panel. After due deliberation, the Panel partially granted Respondent's Motion to Strike and Ordered Claimants to file an Amended Statement of Claim.

At the hearing, Claimants moved the Panel to permit telephonic testimony and to admit into evidence settlement agreements and affidavits from cases not involving all the parties to this matter. The Panel denied both motions.

On November 16, 2004, Respondent filed a Motion in Limine to Exclude Testimony of Legal Expert. At the hearing, 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to 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	= \$ 250.00
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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 Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

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:

(2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$2,000.00

Pre-hearing conferences: January 12, 2004 1 session
 January 26, 2004 1 session

(6) Hearing sessions @ \$1,000.00/session = \$6,000.00

Hearings: November 30, 2004 2 sessions
 December 1, 2004 2 sessions
 December 2, 2004 2 sessions

Total Forum Fees = **\$ 8,000.00**

1. The Panel assessed \$4,000.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$4,000.00 of the forum fees to Respondent.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 4,000.00
Total Fees	= \$ 4,250.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 2,825.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 4,000.00
Total Fees	= \$ 8,450.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 4,000.00

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.

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ARBITRATION PANEL

Joseph C. Roberts
Imants J. Leskinovitch
Patrick L. Hinton, Esq.

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Joseph C. Roberts
Chair, Public Arbitrator

12/07/04
Signature Date

Imants J. Leskinovitch
Public Arbitrator

Signature Date

Patrick L. Hinton, Esq.
Non-Public Arbitrator

Signature Date

12/7/04
Date of Service

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Joseph C. Roberts	-	Public Arbitrator, Presiding Chair
Imants J. Leskinovitch	-	Public Arbitrator
Patrick L. Hinton, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joseph C. Roberts
Chair, Public Arbitrator

Signature Date

Imants J. Leskinovitch
Public Arbitrator

Signature Date



Patrick L. Hinton, Esq.
Non-Public Arbitrator

12/7/04

Signature Date

12/7/04

Date of Service