
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Paul Bartholomew

Case Number: 03-06023

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Paul Bartholomew, hereinafter referred to as "Claimant": Robert Blanchard, Esq., Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola, Florida.

For Merrill Lynch, Pierce, Fenner and Smith, Inc., hereinafter referred to as "Respondent": Thomas A. Farnen, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: August 19, 2003.

Claimant signed the Uniform Submission Agreement: June 26, 2003.

Statement of Answer filed by Respondent on or about: November 21, 2003.

Respondent signed, but did not date, the Uniform Submission Agreement.

Motion to Strike filed by Respondent on or about: November 21, 2003.

Response to Respondent's Motion to Strike filed by Claimant on or about: December 3, 2003.

Reply Memorandum in Support of its Motion to Strike filed by Respondent on or about: January 9, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; fraud; negligent misrepresentation; negligence; and, violation of Blue Sky Laws. The causes of action relate to the purchase and sale of shares of EMC Corporation, Yahoo, Inc., Cisco Systems, Ebay, Inc. and Internet Capital Group stock in Claimant's accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$66,358.11, punitive damages, interest, costs, attorney's fees and any other relief deemed just and proper.

Respondent requested that the Panel reject Claimant's Statement of Claim in its entirety, order

that forum fees be borne by Claimant and award Respondent its attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 11, 2004, the Panel issued an order which granted Respondent's Motion to Strike.

During the evidentiary hearing on August 17, 2004, Respondent made an ore tenus Motion for Directed Verdict. Claimant objected to the motion. The Panel granted the motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

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:

Claimant's claims are dismissed in their entirety.

Claimant shall pay to Respondent attorney's fees in the amount of \$1,511.50 pursuant to Section 517.211(6) of the Florida Statutes.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for damages pursuant to unspecified Blue Sky Laws and punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 | = \$ 225.00 |
|--------------------------|-------------|

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 Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,100.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$1,700.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ \$450.00 | = \$ 450.00 |
| Pre-hearing conference: August 5, 2004 1 session | |
| Two (2) Pre-hearing sessions with the Panel @ \$750.00 | = \$1,500.00 |
| Pre-hearing conferences: April 2, 2004 1 session | |
| June 11, 2004 1 session | |
| Two (2) Hearing sessions @ \$750.00 | = \$1,500.00 |
| Hearing Date: August 17, 2004 2 sessions | |
| Total Forum Fees | = \$3,450.00 |

The Panel has assessed \$2,475.00 of the forum fees to Claimant.
The Panel has assessed \$975.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

| | |
|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 225.00 |
| Forum Fees | = \$ 2,475.00 |
| Total Fees | = \$ 2,700.00 |
| Less payments | = \$ 975.00 |
| Balance Due NASD Dispute Resolution | = \$ 1,725.00 |

Respondent is solely liable for:

| | |
|-------------------------------------|----------------------|
| Member Fees | = \$ 3,550.00 |
| <u>Forum Fees</u> | <u>= \$ 975.00</u> |
| Total Fees | = \$ 4,525.00 |
| <u>Less payments</u> | <u>= \$ 3,550.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 975.00 |

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

ARBITRATION PANEL

| | | |
|----------------------|---|--|
| Lawrence M. Green | - | Public Arbitrator, Presiding Chairperson |
| Irving Wolinsky, DDS | - | Public Arbitrator |
| Marc S. Piven | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

| | |
|--|-----------------------|
| /s/ | 08/18/04 |
| <u>Lawrence M. Green</u> Public Arbitrator, Presiding Chairperson | <u>Signature Date</u> |
| /s/ | 08/20/04 |
| <u>Irving Wolinsky, DDS</u> Public Arbitrator | <u>Signature Date</u> |
| /s/ | 08/19/04 |
| <u>Marc S. Piven</u> Non-Public Arbitrator | <u>Signature Date</u> |

08/23/04

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



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Arbitration No. 03-06023
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Concurring Arbitrators' Signatures



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Public Arbitrator, Presiding Chairperson

08-18-04

Signature Date

Irving Wolinsky, DDS
Public Arbitrator

Signature Date

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Non-Public Arbitrator

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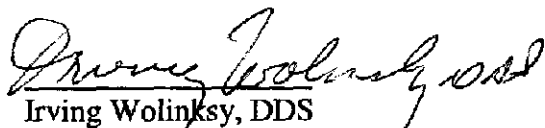
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Concurring Arbitrators' Signatures

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Public Arbitrator, Presiding Chairperson

Signature Date


Irving Wolinsky, DDS
Public Arbitrator

8-20-04
Signature Date

Marc S. Piven
Non-Public Arbitrator

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Lawrence M. Green
Public Arbitrator, Presiding Chairperson

Signature Date

Irving Wolinsky, DDS
Public Arbitrator

Signature Date



Marc S. Piven
Non-Public Arbitrator



Signature Date

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