

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

NGA Inc. (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith and Mark Justin (Respondents)

Case Number: 03-06160

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant NGA Inc. hereinafter referred to as "Claimant": Norman Goldstein, President, NGA Inc., Hicksville, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith ("Merrill") and Mark Justin ("M. Justin") hereinafter collectively referred to as "Respondents": Steven G. Leventhal, Esq., Leventhal and Sliney, LLC, Roslyn, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2003.

Claimant signed the Uniform Submission Agreement: September 18, 2003.

Statement of Answer filed by Respondents on or about: November 13, 2003.

Motion to Dismiss filed by Respondents on or about: March 4, 2004.

Respondent Merrill signed the Uniform Submission Agreement: November 13, 2003.

Respondent M. Justin signed the Uniform Submission Agreement: November 13, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: gross negligence and failure to follow instructions. The causes of action relate to a stop payment request made on Claimant's Working Capital Management Account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$15,048.00, punitive damages in the amount of \$34,952.00, attorneys' fees, costs and other relief.

Respondents requested that the claim be dismissed in its entirety and an award for all costs,

disbursements and attorneys' fees in their favor.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 23, 2006 Respondents renewed their Motion to Dismiss that was previously denied by the Arbitrator. After due deliberation the Arbitrator granted the Motion based on Claimant's failure to comply with the Arbitrator's April 4, 2004 and August 1, 2004 discovery rulings and failure to respond to NASD Dispute Resolution's January 25, 2006 letter.

The parties have 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, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

November 15, 2004 adjournment by Claimant	= \$ 450.00
January 19, 2005 adjournment by Respondents jointly and severally	= \$ 450.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 a single arbitrator @ \$450.00	= \$ 450.00
<u>Pre-hearing conference: April 7, 2004 1 session</u>	
Total Forum Fees	= \$ 450.00

1. The Arbitrator has assessed \$225.00 of the forum fees to Claimant.
2. The Arbitrator has assessed \$225.00 of the forum fees to Respondents jointly and severally.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 450.00
<u>Forum Fees</u>	= \$ 225.00
Total Fees	= \$ 850.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent Merrill is solely liable for:

<u>Member Fees</u>	= \$2,625.00
Total Fees	= \$2,625.00
<u>Less payments</u>	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 450.00
<u>Forum Fees</u>	= \$ 225.00
Total Fees	= \$ 675.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 675.00

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

ARBITRATION PANEL

Mary Ann Lanzetta

- Sole Public Arbitrator

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 which is my award.

Arbitrator's Signature


Mary Ann Lanzetta
Public Arbitrator


Signature Date

May 11, 2006

Date of Service (For NASD Dispute Resolution use only)