

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Herbert and Lorraine Sahar, Claimants, v. Jeffrey M. Christenat and Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondents

Case Number: 03-06249

Hearing Site: Seattle, Washington

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

REPRESENTATION OF PARTIES

For Claimants:

David N. Bruce, Esq.
Savitt & Bruce LLP
Seattle, Washington

For Respondents:

Robert B. Ericson, Esq.
Bingham McCutchen
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 20, 2003

Claimants' Joint Uniform Submission Agreement signed: August 19, 2003

Joint Statement of Answer filed by Respondents Jeffrey M. Christenat and Merrill Lynch, Pierce, Fenner & Smith, Inc.: November 20, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: October 3, 2003

CASE SUMMARY

Claimants alleged unsuitability, breach of fiduciary duty, violation of Washington State Securities Act, and violation of Washington State Consumer Protection Act. Claimants' allegations involved internet securities such as Infospace.

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

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$1,000,000.00, unspecified punitive damages or in the alternative treble damages, pre-judgment interest at a rate of 12% per annum, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, an assessment of all NASD forum fees against Claimants, and expungement of this matter from Respondent Jeffrey M. Christenat's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Jeffrey M. Christenat did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure, and having answered the claim and appeared and testified at the hearing, he is bound by the determination of the Panel on all issues submitted.

In a letter dated August 27, 2004, Claimants dismissed their claims against Respondents with prejudice. In a letter dated September 10, 2004, Respondents requested a hearing for the purpose of requesting an Award from the Panel that would recommend expungement of this matter from Respondent Jeffrey M. Christenat's CRD records. In a letter dated September 10, 2004, Claimants stated that they did not take a position on Respondents' request for a hearing or on any substantive issues that might be presented at such a hearing. On September 21, 2004, the Panel issued an Order granting Respondents' request for a hearing on the issue of expungement with all forum fees for such a hearing to be assessed against Respondents. Accordingly, the hearing took place on September 30, 2004 with Respondents and the Panel present.

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) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jeffrey M. Christenat's registration records maintained by NASD's Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Jeffrey M. Christenat must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 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 = \$ 375.00

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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

Adjournment Fees

The following adjournment fees are assessed:

July 27-29, 2004, adjournment requested by Claimants and Respondents = \$ waived

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:

Two (2) pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00

Pre-hearing conferences:	January 9, 2004	1 session
	March 12, 2004	1 session

Two (2) hearing sessions @ \$1,200.00/session = \$ 2,400.00

Hearing:	September 30, 2004	2 sessions
Total Forum Fees		= \$ 4,800.00

1. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Claimants Herbert and Lorraine Sahar.

2. The Panel assessed \$3,600.00 of the forum fees jointly and severally to Respondents Jeffrey M. Christenat and Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

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

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,575.00
<u>Less payments</u>	= \$(1,700.00)
Refund Due Herbert and Lorraine Sahar	= \$ (125.00)

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

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$(10,150.00)
Refund Due Merrill Lynch, Pierce, Fenner & Smith, Inc.	= \$ (3,150.00)

3. Respondents Jeffrey M. Christenat and Merrill Lynch, Pierce, Fenner & Smith, Inc. are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,600.00
<u>Less Payments by Merrill Lynch, Pierce, Fenner & Smith, Inc.</u>	= \$ (3,600.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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.

ARBITRATION PANEL

Melvyn Jay Simburg, Esq.
Daniel Paul Harris, J.D.
Bonny Kathleen Riggs

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Melvyn Jay Simburg, Esq.
Chair, Public Arbitrator

October 1, 2007
Signature Date

Daniel Paul Harris, J.D.
Public Arbitrator

Signature Date

Bonny Kathleen Riggs
Non-Public Arbitrator

Signature Date

10/4/07
Date of Service

ARBITRATION PANEL

Melvyn Jay Simburg, Esq.
Daniel Paul Harris, J.D.
Bonny Kathleen Riggs

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-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Melvyn Jay Simburg, Esq.
Chair, Public Arbitrator



Daniel Paul Harris, J.D.
Public Arbitrator

Signature Date

10-4-2004
Signature Date

Bonny Kathleen Riggs
Non-Public Arbitrator

Signature Date

10/21/04
Date of Service

NASD Dispute Resolution
Arbitration No. 03-06249
Award Page 5 of 5

ARBITRATION PANEL

<i>Melvyn Jay Simburg, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Daniel Paul Harris, J.D.</i>	-	<i>Public Arbitrator</i>
<i>Bonny Kathleen Riggs</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures:

Melvyn Jay Simburg, Esq.
Chair, Public Arbitrator

Signature Date

Daniel Paul Harris, J.D.
Public Arbitrator

Signature Date

Bonny Kathleen Riggs
Bonny Kathleen Riggs
Non-Public Arbitrator

10-01-04
Signature Date

10/4/04
Date of Service