

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Max Marcus, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Quinton H. Ellis, Jr., and
Martin A. Mayer, Jr., Respondents

Case Number: 03-06373

Hearing Site: San Diego, California

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

REPRESENTATION OF PARTIES

For Claimant:

Robert Scott Dreher, Esq.
Dreher Law Firm
San Diego, California

For Respondents:

Robert M. Traylor, Esq.
Seltzer, Caplan, McMahon, Vitek
San Diego, California

CASE INFORMATION

Statement of Claim filed: August 29, 2003

Claimant's Uniform Submission Agreement signed: September 11, 2003

Joint Statement of Answer filed by Respondents: December 5, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: October 15, 2003

Respondent Quinton H. Ellis, Jr.'s Uniform Submission Agreement signed: December 15, 2003

Respondent Martin A. Mayer, Jr. Uniform Submission Agreement signed: December 17, 2003

CASE SUMMARY

Claimant alleged breach of fiduciary duty, negligence, breach of contract, unfair business practices, and failure to supervise. The dispute involved the purchase and/or sale of various securities.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$250,000.00, a reimbursement of the reasonable rate of return on this money, along with a recovery of all margin fees and interest, commissions, and other fees paid to Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, forum fees, and costs, including attorney's fees. Additionally, Respondents Quinton H. Ellis, Jr. and Martin A. Mayer, Jr. requested that all references to this matter be expunged from their regulatory records, including their CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

On October 20, 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 October 22, 2004, NASD Dispute Resolution received notice of settlement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

STIPULATION

The parties to this arbitration stipulate as follows:

Whereas, Claimant Max Marcus brought certain claims against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Quinton Ellis ("Ellis"), and Martin A. Mayer ("Mayer") (collectively "Respondents") before the NASD Regulation, Inc. for arbitration and resolution and were assigned claim No. 03-06373;

Whereas, as set forth in the their Statement of Answer, Respondents denied and continue to deny all material allegations of Claimant's claims, and have agreed to settle this matter;

Whereas, the Parties wish to avoid the costs associated with hearings in this matter;

Whereas, the Parties have entered into a Confidential Settlement Agreement and General Release (the Settlement Agreement) regarding Claimant's claims against Respondents;

Whereas, pursuant to the Settlement Agreement, Claimant previously has dismissed Ellis and Mayer from these arbitration proceedings, with prejudice;

Whereas, Ellis and Mayer did not make any monetary contribution to the settlement;

Whereas, Claimant consents to and supports that his complaint against Respondents Ellis and Mayer be expunged from their Forms U-4, U-5 and any other report or reporting document;

WHEREFORE, Claimant and Merrill Lynch, hereby stipulate to, and seek the arbitrators' approval of, the following order:

1. The arbitration denominated Max Marcus v. Merrill Lynch, Pierce, Fenner & Smith, *et al.*, NASD 03-06373, shall be dismissed with prejudice upon notification by Claimant that the settlement proceeds have been received.
2. The arbitrators recommend and direct that all references to the complaints of the Claimants or the claim filed by Max Marcus be expunged from the records of Respondents Quinton Ellis and Martin Mayer maintained by the NASD in its Central Registration Depository, (CRD), with the understanding that, pursuant to NASD Notice to Members 99-09, NASD Regulation will not execute the expungement directive until the arbitration award is confirmed by a court of competent jurisdiction.
3. Merrill Lynch shall bear any costs or fees in connection with any court proceedings that occur to obtain expungement.

AWARD

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant and Respondents have entered into a confidential settlement agreement.
- 2) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Quinton H. Ellis, Jr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Quinton H. Ellis, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Martin A. Mayer, Jr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Martin A. Mayer, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("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. 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

Three-Day Cancellation Fees

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of October 25-29, 2004 hearings dates: = \$ 300.00

1. The Panel assessed \$150.00 of the three-day cancellation fee to Claimant.
2. The Panel assessed \$150.00 of the three-day cancellation fee jointly and severally to Respondents.

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:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: August 27, 2004 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-hearing conference: February 20, 2004 1 session

Total Forum Fees = \$ 1,575.00

1. The Panel assessed \$787.50 of the forum fees to Claimant.
2. The Panel assessed \$787.50 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
Three-Day Cancellation Fee	= \$ 150.00
Retained Deposit Pursuant to Rule 10332(f)	= \$ 337.50
Total Fees	= \$ 1,575.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 150.00

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

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

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Quinton H. Ellis, Jr., and Martin A. Mayer, Jr. are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 787.50
Three-Day Cancellation Fee	= \$ 150.00
Total Fees	= \$ 937.50
Less payments by Merrill Lynch, Pierce, Fenner & Smith, Inc.	= \$(750.00)
Balance Due NASD Dispute Resolution	= \$ 187.50

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.

FROM :

Jan. 18 2005 01:07PM P1

Jan-14-2005 02:35pm From-NASDA DISPUTE RESOLUTION

T-211 P.014/014 F-230

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ARBITRATION PANEL

Glen W. Hanne	•	Public Arbitrator, Presiding Chair
Leslie Jordan	•	Public Arbitrator
Kelly A. Barker-Alfino	•	Non-Public Arbitrator

Concurring Arbitrators' Signatures:


Glen W. Hanne
Chair, Public Arbitrator

1-18-05
Signature Date

Leslie Jordan
Public Arbitrator

Signature Date

Kelly A. Barker-Alfino
Non-Public Arbitrator

Signature Date

1/21/05
Date of Service

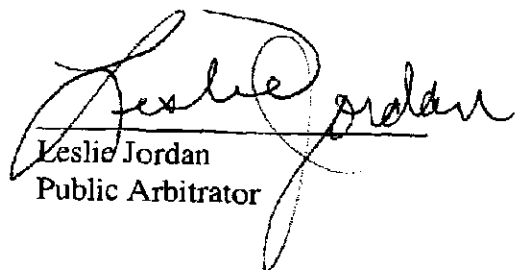
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Leslie Jordan	-	Public Arbitrator
Kelly A. Barker-Alfino	-	Non-Public Arbitrator

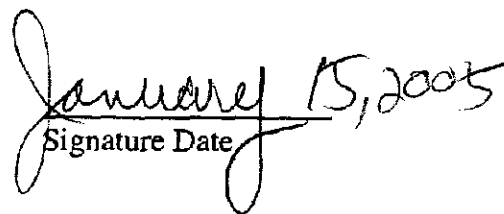
Concurring Arbitrators' Signatures

Glen W. Hanne
Chair, Public Arbitrator

Signature Date



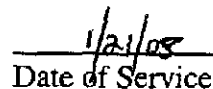
Leslie Jordan
Public Arbitrator



Signature Date

Kelly A. Barker-Alfino
Non-Public Arbitrator

Signature Date



Date of Service

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Concurring Arbitrators' Signatures:

Glen W. Hanne
Chair, Public Arbitrator

Signature Date

Leslie Jordan
Public Arbitrator

Signature Date



Kelly A. Barker-Alfino
Non-Public Arbitrator

1/14/05

Signature Date

1/21/05

Date of Service