

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Neil Michael, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Paul Padovani,
Respondents

Case Number: 03-09084

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Steve A. Buchwalter, Esq.
Law Offices of Steve A. Buchwalter, P.C.
Encino, California

For Respondent Merrill Lynch,
Pierce, Fenner & Smith Inc.:

John Piskora, Esq.
Loeb & Loeb LLP
New York, New York

For Respondent Paul Padovani:

David Spears, Esq.
Richards Spears Kibbe & Orbe LLP
New York, New York

CASE INFORMATION

Statement of Claim filed: December 17, 2003

Claimant's Uniform Submission Agreement signed: December 16, 2003

Joint Statement of Answer and Motion to Dismiss filed by Respondents: April 19, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.'s Uniform Submission Agreement signed:
February 3, 2004

Respondent Paul Padovani's Uniform Submission Agreement signed: April 1, 2004

CASE SUMMARY

Claimant alleged breach of fiduciary duty, fraud, negligence, and failure to supervise, involving various loans to Magellin Entertainment, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted that Claimant's claims are barred by the NASD Code's six-year eligibility rule and applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested \$1,093,500.00 in compensatory damages, unspecified punitive damages, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, costs, and expungement of Respondent Paul Padovani's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

On February 2, 2004, 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 April 19, 2004, Respondents jointly filed a Motion to Dismiss along with their Statement of Answer. On April 30, 2004, Claimant filed his Opposition to the Motion to Dismiss. On October 4, 2004, Respondents filed a Reply Memorandum of Law in Further Support of their Motion to Dismiss. On October 8, 2004, Claimant filed a Response to the Reply Memorandum. On October 15, 2004, the Panel and parties convened telephonically to allow for oral argument on Respondents' Motion to Dismiss. After due deliberation and consideration of the motion, the Panel granted Respondents' Motion to Dismiss on October 15, 2004.

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 telephonic conferences, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents' Motion to Dismiss is granted.
- 2) Claimant's claims are dismissed without prejudice.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul Padovani's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Paul Padovani 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, 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	= \$ 500.00
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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. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$ 3,550.00

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 Panel. The following fees are assessed:

2 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: October 8, 2004	1 session
October 15, 2004	1 session

Total Forum Fees	= \$ 2,400.00
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1. The Panel assessed \$ 1,200.00 of the forum fees to Claimant.
2. The Panel assessed \$ 1,200.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,700.00
Less payments	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 3,550.00
Less payments	= \$(3,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are charged jointly and severally with the following fees and costs:

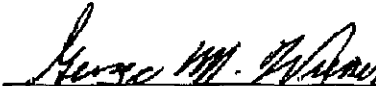
Forum Fees	= \$ 1,200.00
Less payments	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

George M. Wiener, Esq.	..	Public Arbitrator, Presiding Chair
Joseph C. Watson, Esq.	..	Public Arbitrator
Luther Delano Prater	..	Non-Public Arbitrator

Concurring Arbitrators' Signatures


George M. Wiener, Esq.
Chair, Public Arbitrator

October 19, 2004
Signature Date

Joseph C. Watson, Esq.
Public Arbitrator

Signature Date

Luther Delano Prater
Non-Public Arbitrator

Signature Date


10/19/04
Date of Service

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Non-Public Arbitrator

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