

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Bell Family Trust

Case Number: 04-01000

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Mark K. Fischer

Hearing Site: Raleigh, North Carolina

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

REPRESENTATION OF PARTIES

Claimant, Bell Family Trust, hereinafter referred to as "Claimant", was represented by Carrie Ann Orlikowski, Esq., Lea, Rhine & Rosbrugh, PLLC, Wilmington, North Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Mark K. Fischer ("Fischer"), hereinafter collectively referred to as "Respondents", were represented by Joseph L. Hood, Jr., Esq., Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C., El Paso, Texas.

CASE INFORMATION

Statement of Claim filed on October 25, 2004.

Henry F. Bell, Trustee, signed the Uniform Submission Agreement on behalf of Claimant on February 17, 2004.

Statement of Answer filed by Respondents on April 16, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on March 10, 2004.

Respondent Fischer signed the Uniform Submission Agreement on April 6, 2004.

Claimant filed a Motion to Dismiss Without Prejudice on September 19, 2005.

Response to Claimant's Motion to Dismiss Without Prejudice filed by Respondents on September 27, 2005.

Supplement to Response to Claimant's Motion to Dismiss Without Prejudice filed by Respondents on September 29, 2005.

Reply to Respondents' Response to Claimant's Motion to Dismiss Without Prejudice filed by Claimant on October 3, 2005.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action, among others: violations of the Texas Deceptive Trade Practices-Consumer Protection Act, violations of federal securities laws, violations of the Texas Securities Act, misrepresentations, breach of fiduciary

duties, negligence, and breach of contract. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: ratification, Respondents complied with fiduciary duties, Respondents did not violate any federal or state securities laws, and Claimant's claims are barred by the statute of limitations.

RELIEF REQUESTED

Claimant in the Statement of Claim requested:

Compensatory Damages	\$ 236,724.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Statement of Claim be summarily dismissed, that they be awarded costs, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Fischer's Central Registration Depository ("CRD") record.

OTHER ISSUES CONSIDERED AND DECIDED

On October 3, 2005, the Panel dismissed this matter with prejudice.

AWARD

After considering the pleadings, the Motion to Dismiss Without Prejudice, and all responses and replies thereto, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed with prejudice;
2. Respondents' request for expungement of Respondent Fischer's CRD record is denied with prejudice;
3. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 300.00

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. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 8-11, 2005, adjournment requested by Claimant = \$ 1,125.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$ 1,125.00 = \$ 2,250.00

Pre-hearing conferences: July 30, 2004 1 session

November 23, 2005 1 session

Total Forum Fees = \$ 2,250.00

1. The Panel has assessed \$ 1,125.00 of the forum fees to Claimant.

2. The Panel has assessed \$ 1,125.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee = \$ 300.00

Adjournment Fee = \$ 1,125.00

Forum Fees = \$ 1,125.00

Total Fees = \$ 2,550.00

Less payments = \$ 2,550.70

Refund Owed Claimant = \$ 0.70

2. Respondent Merrill Lynch is assessed and shall pay:

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

3. Respondents are jointly and severally assessed and shall pay:

Forum Fees -	= \$	1,125.00
Total Fees	= \$	1,125.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	1,125.00

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

ARBITRATION PANEL

Robert P. Porter	-	Public Arbitrator, Presiding Chairperson
Seymour Freed	-	Public Arbitrator, Panelist
Sandra J. Bakalus	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Robert P. Porter
Public Arbitrator, Presiding Chairperson

30 Nov 2005
Signature Date

Seymour Freed
Public Arbitrator, Panelist

Signature Date

Sandra J. Bakalus
Non-Public Arbitrator, Panelist

Signature Date

November 30, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Robert P. Porter
Public Arbitrator, Presiding Chairperson

Signature Date

Seymour Freed
Seymour Freed
Public Arbitrator, Panelist

NOVEMBER 30, 2005
Signature Date

Sandra J. Bakalus
Non-Public Arbitrator, Panelist

Signature Date

November 30, 2005
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

Robert P. Porter
Public Arbitrator, Presiding Chairperson

Signature Date

Seymour Freed
Public Arbitrator, Panelist

Signature Date


Sandra J. Bakalus
Non-Public Arbitrator, Panelist


Signature Date


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