

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Douglas and Lori Grohs, Claimants v. Eric W. Anderson and Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Respondents

Case Number: 04-01273

Hearing Site: Seattle, Washington

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

REPRESENTATION OF PARTIES

For Claimants:

Lawrence R. Cock, Esq.
Fredrick Huebner, Esq.
Cable, Langenbach, Kinerk
& Bauer, LLP
Seattle, Washington

For Respondents:

Michael R. Scott, Esq.
Steven T. Masada, Jr., Esq.
Hillis Clark Martin &
Peterson
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: February 25, 2004

Claimants' Joint Uniform Submission Agreement signed: February 24, 2004

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated: May 11, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission Agreement signed: March 25, 2004

Respondent Eric W. Anderson's Uniform Submission Agreement signed: April 19, 2004

CASE SUMMARY

Claimants alleged breach of fiduciary duty, negligence, professional negligence, violation of agency principles, violation of the Washington State Securities Act, breach of contract, negligent misrepresentation, failure to train, negligent hiring and supervision, vicarious and derivative liability, and violation of the Washington Consumer Protection Act. Claimants' allegations

involved Respondents' (a) failure to manage the risk inherent in Claimants' holding concentrated positions in Level 3 and WorldCom stock; and (b) inappropriate recommendation to pledge shares of Level 3 and WorldCom as collateral for a Merrill Lynch Credit Corporation home mortgage.

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

RELIEF REQUESTED

Claimants requested \$2,400,000.00 in compensatory damages, treble damages up to \$10,000.00 pursuant to the Washington Consumer Protection Act, pre-judgment interest in the amount of \$750,000.00, assessment of forum fees against Respondents, reimbursement of Claimants' filing fee, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, expungement of this matter from Respondent Eric W. Anderson's CRD records, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

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) Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated is liable to and shall pay Claimants Douglas and Lori Grohs the sum of \$1,560,041.80 in compensatory damages.
- 2) Respondents Eric W. Anderson and Merrill Lynch, Pierce, Fenner & Smith, Incorporated are jointly and severally liable to and shall pay Claimants Douglas and Lori Grohs the sum of \$275,301.50 in compensatory damages.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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, Incorporated is a party, and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
Total Member Fees	= \$8,550.00

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 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: March 4, 2005 1 session	

One (1) pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: September 10, 2004 1 session	

Ten (10) hearing sessions @ \$1,200.00/session	= \$12,000.00
Hearings: June 6, 2005 2 sessions	
June 7, 2005 2 sessions	
June 8, 2005 2 sessions	
June 9, 2005 2 sessions	
June 10, 2005 2 sessions	

Total Forum Fees	= \$13,650.00
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The Panel assessed \$13,650.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Eric W. Anderson.

Fee Summary

1. Claimants Doug and Lori Grohs are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$(1,800.00)</u>
Refund Due Claimants	= \$(1,300.00)

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

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$(8,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Eric W. Anderson are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$13,650.00</u>
Balance Due NASD Dispute Resolution	= \$13,650.00

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

Elwood C. Avery

Lawrence E. Little, Esq.

Mark D. Roth, Esq.

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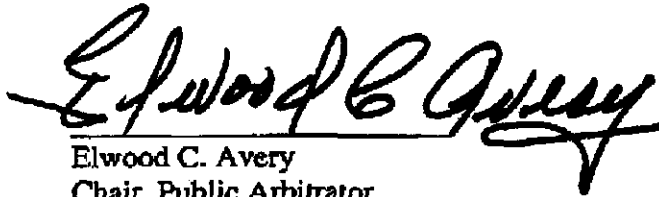
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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures


Elwood C. Avery
Chair, Public Arbitrator

June 11, 2005

Signature Date

Lawrence E. Little, Esq.
Public Arbitrator

Signature Date

Mark D. Roth, Esq.
Non-Public Arbitrator

Signature Date


Date of Service

ARBITRATION PANEL

Elwood C. Avery	-	Public Arbitrator, Presiding Chair
Lawrence E. Little, Esq.	-	Public Arbitrator
Mark D. Roth, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Elwood C. Avery
Chair, Public Arbitrator

Signature Date



Lawrence E. Little, Esq.
Public Arbitrator

6/11/05

Signature Date

Mark D. Roth, Esq.
Non-Public Arbitrator

Signature Date

6/13/05

Date of Service

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ARBITRATION PANEL

<i>Elwood C. Avery</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Lawrence E. Little, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Mark D. Roth, Esq.</i>	-	<i>Non-Public Arbitrator</i>


Concurring Arbitrators' Signatures

Elwood C. Avery
Chair, Public Arbitrator

Signature Date

Lawrence E. Little, Esq.
Public Arbitrator

Signature Date



Mark D. Roth, Esq.
Non-Public Arbitrator

6-13-05

Signature Date

6/13/05

Date of Service