

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Mychal Lahey, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

Case Number: 04-01363

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant:

Mychal Lahey
Chico, California

For Respondent:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud
Sacramento, California

CASE INFORMATION

Statement of Claim filed: February 26, 2004

Claimant's Uniform Submission Agreement signed: March 8, 2004

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): May 3, 2004

Respondent Merrill Lynch's Uniform Submission Agreement signed: April 14, 2004

CASE SUMMARY

Claimant alleged that he suffered losses in his account because of unsuitable recommendations made by Respondent. Claimant's allegations involved investments in various unspecified securities.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimant's Claim requested \$90,000.00 in compensatory damages and \$10,000.00 in punitive damages.

Respondent requested:

1. Dismissal of Claimant's claims;
2. An Award in favor of Respondent;
3. Attorneys' fees and costs; and
4. Such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On April 1, 2004, Claimant 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.

During the hearing, Arbitrator Anthony G. Sousa recused from the Panel because of a family emergency. The parties agreed to proceed with the remaining arbitrators.

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, including the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable for and shall pay to Claimant, the sum of \$8,478.72.
- 2) Respondent is liable for and shall pay to Claimant, the sum of \$225.00 as reimbursement for Claimant's filing fee.
- 3) Claimant's claim for punitive damages is denied.

- 4) Except as mentioned in paragraph two above, each party shall bear its own costs, including attorney's fees.
- 5) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$225.00
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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, Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</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 Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$750.00
Pre-hearing conference: July 21, 2004 1 session	
(4) Hearing sessions @ \$750.00/session	= \$3,000.00
Hearings: January 12, 2005 2 sessions	
January 13, 2005 2 sessions	
Total Forum Fees	= \$3,750.00

The Panel assessed the \$3,750.00 in forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
Less Payments	= \$(975.00)
Refund Due Claimant	= \$(750.00)

2. Respondent Merrill Lynch is charged with the following fees and costs:

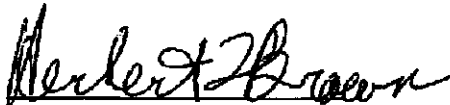
Member Fees	= \$ 3,550.00
Forum Fees	= \$ 3,750.00
Total Fees	= \$ 7,300.00
Less Payments	= \$(3,550.00)
Balance Due NASD-DR	= \$ 3,750.00

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

ARBITRATION PANEL

Herbert L. Brown	-	Non-Public Arbitrator, Presiding Chair
Linda M. McCoy, CPA	-	Public Arbitrator

Concurring Arbitrators' Signatures



Herbert L. Brown
Chair, Non-Public Arbitrator

2-2-05
Signature Date

Linda M. McCoy, CPA
Public Arbitrator

Signature Date

2/2/05
Date of Service

Fee Summary

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

Initial Filing Fee	= \$ 225.00
Less Payments	= \$ (975.00)
Refund Due Claimant	= \$ (750.00)

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 3,750.00
Total Fees	= \$ 7,300.00
Less Payments	= \$ (3,550.00)
Balance Due NASD-DR	= \$ 3,750.00

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

ARBITRATION PANEL

Herbert L. Brown	-	Non-Public Arbitrator, Presiding Chair
Linda M. McCoy, CPA	-	Public Arbitrator

Concurring Arbitrators' Signatures

Herbert L. Brown
Chair, Non-Public Arbitrator


Linda M. McCoy, CPA
Public Arbitrator

Signature Date

Feb. 2, 2005
Signature Date

2/2/05
Date of Service