

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-01521

Edward Giles Wilson

Names of the Respondents

Hearing Site: Richmond, Virginia

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Kenneth Nelson Vostal

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

REPRESENTATION OF PARTIES

Claimant, Edward Giles Wilson, hereinafter referred to as "Claimant", was represented by Emerson R. Marks, Jr., Esq., Charlottesville, Virginia.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kenneth Nelson Vostal ("Vostal"), hereinafter collectively referred to as "Respondents", were represented by Ira L. Oring, Esq., Fedder and Garten, P.A., Baltimore, Maryland.

CASE INFORMATION

Statement of Claim filed on March 3, 2004.

Claimant signed the Uniform Submission Agreement on January 2, 2004.

Statement of Answer filed by Respondents on June 4, 2004.

Respondent Vostal signed the Uniform Submission Agreement on July 1, 2004.

A representative of Respondent executed the Uniform Submission Agreement on June 10, 2004.

Respondents' Motion to Dismiss filed on June 4, 2004.

Claimant's Response to the Motion to Dismiss filed on June 28, 2004.

CASE SUMMARY

Claimant asserted the following causes of action, among others: violation of federal securities law, violation of the Virginia Securities Act, common law fraud and misrepresentation, breach of fiduciary duty and constructive fraud, breach of contract, negligence and negligence misrepresentation, and *respondeat superior*. The causes of action relate to the purchase and sale of technology stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: laches, assumption of risk, waiver, ratification, estoppel, failure to state a claim upon which relief may be granted,

failure to mitigate, contributory/comparative negligence, and Respondent Merrill Lynch had adequate supervisory system in place.

RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$150,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed, that Respondent Vostal records with NASD Central Registration Depository be expunged, and an award of costs, forum fees, and such other relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

By Order dated October 4, 2004, the Panel denied the Motion to Dismiss. Respondent's made an re-raised the Motion to Dismiss at the hearing, which the Panel deferred ruling on until after the hearing had concluded.

The parties have 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Vostal'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 Vostal must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorneys' fees, 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
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) 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
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

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:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
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Pre-hearing conferences:	October 4, 2004	1 session
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Six (6) Hearing sessions @ \$1,125.00	= \$ 6,750.00
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Hearing Dates:	April 25, 2005	2 sessions
	April 26, 2005	2 sessions
	<u>April 27, 2005</u>	<u>2 sessions</u>

Total Forum Fees	= \$ 7,875.00
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1. The Panel has assessed \$7,875.00 of the forum fees to Respondent Merrill Lynch.

SEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

<u>Initial Filing Fee</u>	<u>= \$ 300.00</u>
Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Refund Owed Claimant	= \$ 1,125.00

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

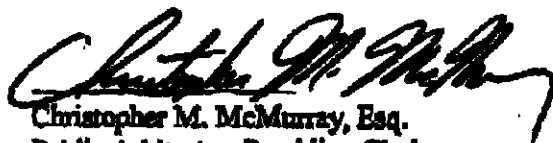
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 7,875.00
Total Fees	= \$13,075.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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

ARBITRATION PANEL

Christopher M. McMurray, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert Charkovsky, Esq.	-	Public Arbitrator, Panelist
William P. McKeithan, J.D.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Christopher M. McMurray, Esq.
Public Arbitrator, Presiding Chairperson

5/6/05
Signature Date

Robert Charkovsky, Esq.
Public Arbitrator, Panelist

Signature Date

William P. McKeithan, J.D.
Non-Public Arbitrator, Panelist

Signature Date

May 11, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Christopher M. McMurray, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Robert Charkovsky

Robert Charkovsky, Esq.
Public Arbitrator, Panelist

May 6, 2005

Signature Date

William P. McKeithan, J.D.
Non-Public Arbitrator, Panelist

Signature Date

May 11, 2005

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


Concurring Arbitrators' Signatures

Christopher M. McMurray, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Robert Charkovsky, Esq.
Public Arbitrator, Panelist

Signature Date



William P. McKeithan, J.D.
Non-Public Arbitrator, Panelist

9 May 2005

Signature Date

May 11, 2005

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