

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

C. Starr Limited Partnership; Starr Family Trust FBO Ross Starr UAD 3/22/99; Starr Donor Trusts 1 through 5, inclusive; and Starr Living Trust UAD 3/30/80, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

Case Number: 04-01648

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Edward S. Gelfand, Esq.
Gelfand Stein & Wasson, LLP
Los Angeles, California

For Respondent:

Susan L. Hoffman, Esq.
Deana A. LaBarbera, Esq.
Bingham McCutchen, LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: March 9, 2004

Claimants' Uniform Submission Agreements signed: February 23, 2004, February 24, 2004, and March 4, 2004

Statement of Answer filed by Respondent: May 19, 2004

Respondent's Uniform Submission Agreement signed: March 25, 2004

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud, intentional misrepresentation, negligent misrepresentation, failure to supervise, securities fraud under state securities laws, and securities fraud under federal securities laws, involving Tyco International, Inc. stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested out-of-pocket damages of not less than \$563,947.00, a return of commissions, fees, and other compensation generated by Respondent, opportunity costs, interest at the statutory rate, NASD filing fees and hearing session fees, punitive and exemplary damages in an amount of not less than \$1,000,000.00, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On April 11, 2004 and April 13, 2004, Claimants and Claimants' 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 waivers of the Claimants 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 26, 2005, NASD Dispute Resolution received notice that the parties stipulated to, subject to objections with respect to the testimony, the video deposition of Chauncey Starr being introduced and shown during the hearing.

On May 2, 2005, at the commencement of the evidentiary hearing, Respondent filed a Motion in Limine to Exclude: (1) The Dinallo Affidavit; (2) The SEC Complaint and Consent Decree of April 2003; (3) The Final Judgment Regarding Merrill Lynch in the United States District Court; (4) The NASD Letter of Acceptance, Waiver, and Consent of April 2003; (5) The NASD Complaint Against Phua K Young; (6) Prior Arbitration Award; and (7) Newspaper Articles. Claimants opposed the motion. The Dinallo Affidavit was not admitted and therefore Respondent's motion with respect to the affidavit was moot. However, after due deliberation, the Panel granted Respondent's Motion in Limine to Exclude the Newspaper Articles and denied the remainder of Respondent's Motion in Limine.

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) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the *Code of Arbitration Procedure* ("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
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Forum Fees and Assessments

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

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
July 15, 2004	1 session
January 31, 2005	1 session

Six (6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings:	
May 2, 2005	2 sessions
May 3, 2005	2 sessions
May 4, 2005	2 sessions

Total Forum Fees	= \$ 9,600.00
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1. The Panel assessed \$4,800.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$4,800.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested photocopies:	= \$ 4.00
8 photocopies @\$0.50/photocopy	

Fee Summary

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

Initial Filing Fee	= \$ 500.00
Administrative Fee	= \$ 4.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 5,304.00
Less payments	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 3,604.00
2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$13,350.00
Less payments	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

Arthur F. Brueggeman	-	Public Arbitrator, Presiding Chair
Katherine Jane Morris	-	Public Arbitrator
Alvin B. Asher	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Arthur F. Brueggeman
Chair, Public Arbitrator

5-10-05
Signature Date

Katherine Jane Morris
Public Arbitrator

Signature Date

Alvin B. Asher
Non-Public Arbitrator

Signature Date

May 10, 2005
Date of Service

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