

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant

John I. Izuchukwu

Case Number: 04-01915

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: St. Louis, Missouri

NATURE OF DISPUTE

Customer vs. Member Firm

REPRESENTATION OF PARTIES

Albert S. Watkins, Esq. of the law firm Kodner, Watkins, Muchnick, Dunne & Weigley, located in St. Louis, Missouri represented Claimant, John I. Izuchukwu ("Izuchukwu"), hereinafter referred to as "Claimant."

Timothy P. Burke, Esq. of the law firm Bingham McCutchen, LLP, located in Boston, Massachusetts, represented the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), hereinafter referred to as "Respondent."

CASE INFORMATION

Statement of Claim filed on March 19, 2003. Claimant signed the Uniform Submission Agreement on February 27, 2004.

Statement of Answer and Affirmative Defenses filed by Respondent on June 14, 2004. Respondent signed the Uniform Submission Agreement on April 19, 2004.

Claimant filed a General Denial of Respondent's Affirmative Defenses on June 21, 2004.

Respondents filed on May 4, 2005, a Motion to Preclude Claimant From Offering Documents Concerning Regulatory Settlements that Address Allegations That Were Never Resolved In An Adjudication on the Merits. Claimants filed his response on May 13, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: negligence, failure to supervise, breach of fiduciary duty, misrepresentations, omission of facts and suitability. The causes of action relate to Tyco Options. Claimant asserted that Respondent made unsuitable investment recommendations regarding Tyco that were speculative and did not meet Claimant's needs and financial objectives.

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

1. Claimant fails to state a claim upon which relief can be granted.
2. Claimant suffered no damages because of the acts of Merrill Lynch.
3. Respondent is not liable to Claimant in any amount because, at all times relevant herein, Respondent acted properly and in good faith with respect to Claimant's account.
4. Claimant ratified Respondent's conduct with respect to each and every investment decision.
5. All risks inherent in the investments at issue were fully disclosed and/or known to Claimant. Moreover, any losses incurred by Claimant were the direct result of adverse economic or market conditions and/or the acts of the issuers of the securities in question and cannot be attributed to Respondent.
6. Claimant failed to mitigate his damages, if any.
7. Claimant directed, approved and/or authorized each and every transaction or investment decision for his account and/or ratified, accepted, acquiesced and confirmed in all respects such transactions or investment decisions. As such, Claimant's claims are barred by the equitable doctrines of estoppel, laches, ratification and waiver.
8. Claimant's allegations of securities fraud are barred by the applicable statutes of limitations. Claimant was well aware of the declining status of Tyco's stock in the first quarter of 2001, and therefore on actual or inquiry notice of any potential claims he may have had, all of which have now expired.
9. At all relevant times, Merrill Lynch maintained an adequate and reasonable system of supervision and control over their employees, and at all times acted in good faith and did not at any time, directly or indirectly, induce any act or acts constituting a violation or cause of action, thus, Merrill Lynch is not subject either to "control person" or *respondeat superior* liability.
10. Claimant is not entitled to an award of attorney's fees, punitive damages, interest or the costs of this proceeding.

RELIEF REQUESTED

Claimant requested \$329,132.01 in compensatory damages; \$329,132.01 in punitive damages; pre and post-judgment interest, attorney's fees, costs, and any other relief that the Panel deems just, fair, proper and/or necessary, inclusive of disciplinary referral.

Respondent requested that Claimant's Statement of Claim be dismissed with prejudice; that all forum and other fees and costs be assessed against Claimant; and that Respondent be granted all other and further relief as Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

In an Order dated May 17, 2005, the Panel denied Respondent's Motion to Preclude Claimant From Offering Documents Concerning Regulatory Settlements that Address Allegations That Were Never Resolved In An Adjudication on the Merits.

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, 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. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is solely liable for and shall pay Claimant, John I. Izuchukwu, the sum of \$30,000.00 as compensatory damages.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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 = \$ 375.00

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, Merrill Lynch is a party and is assessed the following fees:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

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:

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

Four (4) Hearing sessions @ \$1,200.00	= \$ 4,800.00
Hearing Dates: May 24, 2005 2 sessions	
May 25, 2005 2 sessions	

Total Forum Fees	= \$ 6,000.00
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1. The Panel assessed 50% of the total forum fees in the amount of \$3,000.00 solely to Claimant.
2. The Panel assessed 50% of the total forum fees in the amount of \$3,000.00 solely to Respondent.

FEE SUMMARY

1. Claimant, John I. Izuchukwu, is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 3,375.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,800.00

2. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$10,000.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

ARBITRATION PANEL

George T. Mehan, Jr.	-	Public Arbitrator, Presiding Chairperson
Julius Z. Frager	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ George T. Mehan, Jr.
George T. Mehan, Jr.
Public Arbitrator, Presiding Chairperson

5/27/05
Signature Date

/s/ Julius Z. Frager
Julius Z. Frager
Public Arbitrator

5/26/05
Signature Date

/s/ Robert Shiffra, Esq.
Robert Shiffra, Esq.
Non-Public Arbitrator

5/26/05
Signature Date

5/27/05
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
 Arbitration No. 04-01915
 Award Page 4 of 4

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 Julius Z. Frager
 Robert Shiffra, Esq.

- Public Arbitrator, Presiding Chairperson
 - Public Arbitrator
 - Non-Public Arbitrator

Concurring Arbitrators' Signatures


 George T. Mehan, Jr.
 Public Arbitrator, Presiding Chairperson


 May 27, 2005
 Signature Date

Julius Z. Frager
 Public Arbitrator

Signature Date

Robert Shiffra, Esq.
 Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date


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Public Arbitrator

5/26/05
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Concurring Arbitrators' Signatures

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 Public Arbitrator, Presiding Chairperson

 Signature Date

Julius Z. Frager
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 Non-Public Arbitrator

5-26-05
 Signature Date

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