

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael Field Family LLC, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated,
Respondent

Case Number: 04-02682

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Christopher B. Wells, Esq.
Lane Powell Spears Lubersky, LLP
Seattle, Washington

For Respondent:

Curt Roy Hinline, Esq.
Hassan Abedi, Esq.
Dorsey & Whitney, LLP
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: April 8, 2004

Claimant's Uniform Submission Agreement signed: May 12, 2004

Statement of Answer filed: August 31, 2004

Respondent's Uniform Submission Agreement signed: May 28, 2004

CASE SUMMARY

Claimant alleged breach of fiduciary duty, unsuitability, fraud, misrepresentation, negligence, violation of state securities laws, and violation of the Washington Consumer Protection Act. Claimant's allegations involved transactions using zero premium collars, customized liquidity contracts, margin, and aggressive trading in unspecified technology stocks.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and set forth various affirmative defenses.

RELIEF REQUESTED

Claimant requested in excess of \$5,000,000.00 in compensatory damages, exemplary damages under the Washington Consumer Protection Act, pre- and post-judgment interest at the rate of 8% per annum, and costs, including attorney's fees.

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

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 is liable to and shall pay Claimant the sum of \$841,794.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant interest in the amount of 8% per annum on \$841,794.00 from February 1, 2002, until the date payment of this Award is made in full.
- 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	= \$ 600.00
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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
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Adjournment Fees

The following adjournment fees are assessed:

October 24-28, 2005 adjournment requested by the parties	Waived
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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:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
October 15, 2004	1 session
March 21, 2005	1 session
Ten (10) Hearing sessions @ \$1,200.00/session	= \$12,000.00
Hearings:	
January 9, 2006	2 sessions
January 10, 2006	2 sessions
January 11, 2006	2 sessions
January 12, 2006	2 sessions
January 13, 2006	2 sessions
Total Forum Fees	= \$14,400.00

1. The Panel assessed \$7,200.00 of the forum fees to Claimant Michael Field Family LLC.
2. The Panel assessed \$7,200.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

Fee Summary

1. Claimant Michael Field Family LLC is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 7,200.00
Total Fees	= \$ 7,800.00
<u>Less payments</u>	= \$(1,800.00)
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 7,200.00
Total Fees	= \$15,750.00
<u>Less payments</u>	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 7,200.00

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

<i>Robert M. Stein, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Roy J. Mocerl, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Kay A. Johnson</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Robert M. Stein, Esq.
Chair, Public Arbitrator

1-25-2006
Signature Date

Roy J. Mocerl, Esq.
Public Arbitrator

Signature Date

Kay A. Johnson
Non-Public Arbitrator

Signature Date

January 27, 2006
Date of Service

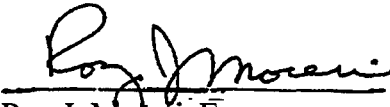
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<i>Robert M. Stein, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Roy J. Mocerì, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Kay A. Johnson</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Robert M. Stein, Esq.
Chair, Public Arbitrator

Signature Date



Roy J. Mocerì, Esq.
Public Arbitrator

1-27-06

Signature Date

Kay A. Johnson
Non-Public Arbitrator

Signature Date

January 27, 2006

Date of Service

ARBITRATION PANEL

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<i>Roy J. Mocerì, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Kay A. Johnson</i>	-	<i>Non-Public Arbitrator</i>

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Robert M. Stein, Esq.
Chair, Public Arbitrator

Signature Date

Roy J. Mocerì, Esq.
Public Arbitrator

Signature Date



Kay A. Johnson
Non-Public Arbitrator

1/30/06

Signature Date

January 30, 2006

Date of Service