

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Paige Arcuri, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent

Case Number: 04-02917

Hearing Site: Las Vegas, Nevada

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Charles Hunter, Esq.
Woska & Hayes, LLP
Kingwood, Texas

For Respondent:

Joe Hood, Esq.
Scott, Hulse, Marshall,
Feuille, Finger & Thurmond,
P.C.
El Paso, Texas

CASE INFORMATION

Statement of Claim filed: April 13, 2004

Claimant's Uniform Submission Agreement signed: April 1, 2004

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated:
June 16, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission
Agreement signed: June 1, 2004

CASE SUMMARY

Claimant alleged control person liability pursuant to Section 20(a) of the Securities and Exchange Act, breach of fiduciary duty, breach of contract, violation of the know your customer rule, unsuitability, failure to diversify, failure to supervise, violations of securities laws such as securities regulatory rules, the Nevada Securities Act, the Nevada Deceptive Trade Practices Act, misrepresentation, unjust enrichment, breach of duty of good faith and fair dealing, gross negligence, unauthorized trading, and failure to hedge. Claimant's allegations involved investments such as the Goldman Sachs Internet Tollkeeper Fund and other aggressive growth Class B mutual fund shares.

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

RELIEF REQUESTED

Claimant requested \$40,000.00 in compensatory damages, reimbursement of charges to the accounts, lost earnings, unspecified punitive damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, an order of expungement of any reference to this claim from Gustavo Amaral and Pawel Szott's CRD records, assessment of costs of arbitration against Claimant, and costs, including attorney's fees.

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, evidence presented at the hearing, and the post-hearing submissions, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimant Paige Arcuri the sum of \$24,000.00 in compensatory damages.
- 2) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimant Paige Arcuri interest at the Nevada statutory rate on \$24,000.00 from June 1, 2002 until the date payment of this Award is made in full.
- 3) Respondent is liable to and shall pay Claimant Paige Arcuri the sum of \$11,082.17 as reimbursement for expenses such as photocopying, expert fees, and travel.
- 4) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimant Paige Arcuri \$175.00 as reimbursement for Claimant's NASD filing fee.
- 5) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimant Paige Arcuri the sum of \$15,000.00 in attorney's fees.
- 6) 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	= \$ 175.00
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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	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

Forum Fees and Assessments

The Arbitrator 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 Arbitrator. The following fees are assessed:

Four (4) pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$ 1,800.00

Pre-hearing conferences:	August 25, 2004	1 session
	March 3, 2005	1 session
	April 11, 2005	1 session
	April 20, 2005	1 session

Six (6) hearing sessions @ \$450.00/session	= \$ 2,700.00
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Hearings:	May 3, 2005	2 sessions
	May 4, 2005	4 sessions

Total Forum Fees	= \$ 4,500.00
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The Arbitrator assessed \$4,500.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Fee Summary

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

Initial Filing Fee	= \$ 175.00
Less payments	= \$(625.00)
Refund Due Claimant	= \$(450.00)

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

Member Fees	= \$ 2,625.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 7,125.00
Less payments	= \$(2,625.00)
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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.

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ARBITRATOR

Mary Alice Cox, CPA

Public Arbitrator

Arbitrator's Signature

Mary Alice Cox

Mary Alice Cox, CPA
Public Arbitrator

5/12/05

Signature Date

5/13/05

Date of Service