

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Northeast National Bank

Case Number: 04-03090

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

Claimant Northeast National Bank, hereinafter referred to as "Claimant": Robert L. Tobey, Esq., of the firm of Johnston Tobey, located in Dallas, Texas.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": John P. Kincade, Esq., of the firm of Winstead Sechrist & Minick P.C., located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: April 28, 2004.

Claimant signed the Uniform Submission Agreement: April 22, 2004.

Statement of Answer filed by Respondent on: July 27, 2004.

Respondent signed the Uniform Submission Agreement: May 18, 2004.

Claimant's Letter Non-Suiting Certain Claims filed: February 22, 2005.

Respondent's Hearing Memorandum filed on: April 22, 2005.

Claimant's Responses to Respondent's Hearing Memorandum filed: April 27, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; common law negligence; negligent misrepresentation; breach of contract; and, violation of Federal and State securities laws and NASD Rules of Fair Practice. These claims related to Claimant's allegations that Respondent failed to promptly execute the sale of restricted shares of stock even after the Claimant fulfilled all requirements for sale.

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

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. The Statement of Claim fails to particularize facts upon which relief can be granted;
3. Claimant is barred from recovery because it instructed, directed, authorized, consented to, acquiesced in, and/or ratified all transactions with regard to the sale of stock and the WCMA account;
4. Any monetary losses Claimant allegedly suffered were caused by the investment decisions it made and/or due to historical, market or economic conditions that were beyond Respondent's control;
5. Respondent is not liable to Claimant because, at all times relevant herein, it acted properly, in good faith, and in a commercially reasonable manner with respect to the sale of stock and the Claimant's account;
6. The Respondent never guaranteed any level of return on the Claimant's sale of stock;
7. Claimant's claims are barred in whole or in part by reason of its contributory and/or comparative negligence, and any losses it suffered resulted from its own actions;
8. Principles of waiver, satisfaction, estoppel and laches bar Claimant's claims in whole or in part. It is estopped from asserting the claims set forth in the Statement of Claim due to its own acts and conduct;
9. Claimant is barred from any recovery because it failed to mitigate its losses or damages, if any;
10. Claimant is barred from recovery because it was apprised fully of the process required in reregistering and selling the restricted stock;
11. Claimant's claims are barred by the applicable statutes of limitations;
12. In the alternative, Claimant's claims are barred by the economic loss rule; and,
13. Claimant's claims are barred because it has unclean hands.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 174,074.00
Interest	Pre- and Post-Award as allowed by Texas law
Attorneys' Fees	Pursuant to Texas law in the sum of 33% of all damages awarded
Other Costs	Any direct costs

Respondent requested:

1. That Claimant's Statement of Claim be dismissed with prejudice;
2. That Claimant take nothing;

3. That Respondent be awarded its reasonable and necessary attorneys' fees, forum fees, and arbitration costs, including refund of the member surcharge; and,
4. All other relief to which it is entitled.

OTHER ISSUES CONSIDERED AND DECIDED

On February 22, 2005, Claimant non-suited its claims of breach of fiduciary duty, negligent misrepresentation, and violation of the Federal and State securities laws and the NASD Rules of Fair Practice. The Claimant pursued its claims of common law negligence and breach of contract.

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, and the pre-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed and denied in its entirety;
2. The parties shall each bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein 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	= \$ 300.00
--------------------------	-------------

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, Pierce, Fenner & Smith, Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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
Pre-hearing conference: October 12, 2004 1 session	
Five (5) Hearing sessions @ \$1,125.00	= \$ 5,625.00
Hearing Dates: May 3, 2005 1 session	
June 27, 2005 2 sessions	
June 28, 2005 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 6,750.00

The Panel has assessed \$6,750.00 of the forum fees to the Claimant, Northeast National Bank.

FEE SUMMARY

Claimant Northeast National Bank is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$ 7,050.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

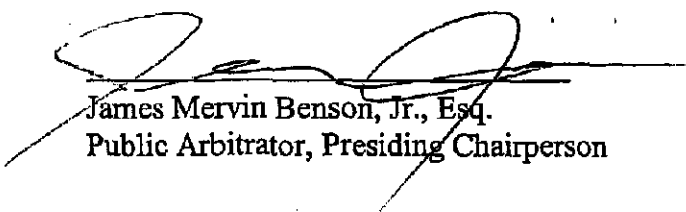
Member Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

James Mervin Benson, Jr., Esq. - Public Arbitrator, Presiding Chairperson
William L. Dorcy - Public Arbitrator
Marie A. Moore - Non-Public Arbitrator

Concurring Arbitrators' Signatures


James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

7-11-05
Signature Date

William L. Dorcy
Public Arbitrator

Signature Date

Marie A. Moore
Non-Public Arbitrator


Signature Date

7/15/05 
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


William L. Dorcy
Public Arbitrator

07-12-05
Signature Date

Marie A. Moore
Non-Public Arbitrator

Signature Date

7/15/05 
Date of Service (For NASD Dispute Resolution office use only)

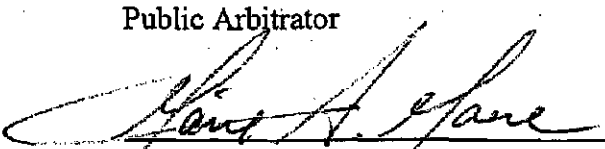
Concurring Arbitrators' Signatures

James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

William L. Dorcy
Public Arbitrator

Signature Date



Marie A. Moore
Non-Public Arbitrator

7-11-05

Signature Date

7/15/05 Man

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