

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kung Ming Chan (Claimant) v. Merrill Lynch Pierce Fenner and Smith, Inc., and E. Stanley Peck Jr. (Respondents)

Case Number: 04-03573

Hearing Site: Newark, New Jersey

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Claimant Kuang Ming Chan hereinafter referred to as "Claimant": Appeared *pro se*.

Respondents, Merrill Lynch Pierce Fenner and Smith Inc., ("Merrill") and E. Stanley Peck Jr. ("Peck"), hereinafter collectively referred to as "Respondents": David J. Libowsky, Esq., Bressler, Amery & Ross, P.C., Florham Park, NJ.

CASE INFORMATION

Statement of Claim filed on or about: May 17, 2004.

Claimant signed the Uniform Submission Agreement: May 3, 2004.

Joint Statement of Answer filed by Respondents on or about: July 15, 2004.

Respondent Merrill signed the Uniform Submission Agreement: June 29, 2004.

Respondent Peck signed the Uniform Submission Agreement: July 13, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, failure to execute, churning and breach of fiduciary duty. The causes of action relate to Global Crossing, Metro Media, and Level 3 Communications.

Unless specifically admitted in their Answer, Respondents Merrill and Peck denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested: \$240,000.00 in compensatory damages and \$61,583.00 in punitive damages.

Respondents requested that the Statement of Claim be dismissed with prejudice in its entirety and this matter be expunged from Peck's CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have 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. Claimant's claims are denied in their entirety. This Panel finds that the Statute of Limitations bars Claimant's claim regarding his alleged purchase of Microsoft. Further, the Panel finds that even if such claim were not time barred it is clear that Claimant's claim is factually impossible. Claimant did not have sufficient funds in his account to purchase the number of Microsoft shares he alleges he requested.
2. Claimant's allegations that Respondents failed to advise him against the purchase of Global Crossing, Metromedia Fiber and Level 3 Communications are similarly unfounded. The Panel finds that these purchases were unsolicited and consistent with numerous other purchases made by the Claimant. Further, the Panel finds that Claimant performed significant research on his own prior to purchasing the abovementioned stocks and that Respondents had no duty to advise Claimant of the inappropriateness of the purchases.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent E. Stanley Peck's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent E. Stanley Peck must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

4. Any and all relief not specifically addressed herein, including punitive, 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 is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

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 @ \$1,125.00 = \$ 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

May 4, 2005 1 session

May 5, 2005 1 session

June 20, 2005 2 sessions

Total Forum Fees = \$ 6,750.00

1. The Panel has assessed \$ 3,375.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 3,375.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 3,375.00

Total Fees = \$ 3,675.00

Less payments = \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 2,250.00

2. Respondent Merrill is solely liable for:

Member Fees = \$ 5,200.00

Total Fees = \$ 5,200.00

<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill and Peck are solely liable for:

<u>Forum Fees</u>	= \$ 3,375.00
Total Fees	= \$ 3,375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

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

ARBITRATION PANEL

Dwight Wassong	-	Public Arbitrator, Presiding Chairperson
Timothy J. Brown	-	Public Arbitrator
Robert F. Hartnett	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Dwight Wassong
Public Arbitrator, Presiding Chairperson

Signature Date

Timothy J. Brown
Public Arbitrator

Signature Date

Robert F. Hartnett
Non-Public Arbitrator


Signature Date

Date of Service (For NASD Dispute Resolution use only)

Timothy J. Brown	-	Public Arbitrator
Robert F. Hartnett	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.


Dwight Wassong
Public Arbitrator, Presiding Chairperson

Signature Date

Timothy J. Brown
Public Arbitrator

Signature Date

Robert F. Hartnett
Non-Public Arbitrator

Signature Date

July 27, 2005
Date of Service (For NASD Dispute Resolution use only)

Timothy J. Brown
Robert F. Hartnett

- Public Arbitrator
- Non-Public Arbitrator

Concerning Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Dwight Wasseng
Public Arbitrator, Presiding Chairperson

Signature Date

Timothy J. Brown
Public Arbitrator

Signature Date

Robert F. Hartnett
Non-Public Arbitrator

Signature Date

July 27, 2005

Date of Service (For NASD Dispute Resolution use only)