

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Eduardo Don, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated, E. Joseph McDonnell, John S. Buchanan, Luis F. Ramirez, Michael J. O'Leary, and Melinda L. De Bruyne, Respondents

Case Number: 04-03623

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Kristin M. Cano, Esq.
The Law Offices of Kristin M. Cano
Newport Beach, California

Steven L. Stern, Esq.
The Law Offices of Steven L. Stern
Newport Beach, California

For Respondents:

Eric J. Glassman, Esq.
Mennmeier, Glassman & Straud,
LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: May 13, 2004

Claimant's Uniform Submission Agreement signed: April 14, 2004

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated, E. Joseph McDonnell, John S. Buchanan, Michael J. O'Leary, and Melinda L. De Bruyne: August 4, 2004

Joint Motion to Dismiss filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated, E. Joseph McDonnell, John S. Buchanan, Michael J. O'Leary, and Melinda L. De Bruyne: August 4, 2004

Joinder in Statement of Answer and Motion to Dismiss filed by Respondent Luis F. Ramirez:
January 19, 2005

Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission Agreement signed:
March 1, 2006

E. Joseph McDonnell's Uniform Submission Agreement signed: March 1, 2006

John S. Buchanan's Uniform Submission Agreement signed: March 1, 2006

Michael J. O'Leary's Uniform Submission Agreement signed: August 13, 2004

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, fraud and deceit, intentional misrepresentation, negligent misrepresentation, intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, violation of state and federal securities laws, and failure to supervise. Claimant's claim involved unspecified securities.

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

RELIEF REQUESTED

Claimant requested \$249,000.00 in compensatory damages, rescission interest at the rate of 10% per annum, unspecified lost opportunity damages, and costs.

Respondents requested dismissal of Claimant's Statement of Claim and costs, including attorney's fees. Respondents also requested the expungement of all reference to the above-captioned arbitration from Respondents E. Joseph McDonnell, John S. Buchanan, Luis F. Ramirez, Michael J. O'Leary, and Melinda L. De Bruyne's registration records maintained by the Central Registration Depository.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Luis F. Ramirez and Melinda L. De Bruyne did not file with the NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On July 31, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On August 4, 2004, Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated, E. Joseph McDonnell, John S. Buchanan, Michael J. O'Leary, and Melinda L. De Bruyne filed a Motion to Dismiss. Claimant filed an Opposition to the motion on December 17, 2004. On January 19, 2005, Respondent Luis F. Ramirez joined the Motion to Dismiss. The Parties and the Panel held a pre-hearing conference on January 21, 2005. Kristin Cano, Esq. represented Claimant. Eric Glassman, Esq. represented Respondents. After due deliberation, the Panel denied the motion.

On June 29, 2005, Claimant dismissed Respondents Luis F. Ramirez, Michael O'Leary, and Melinda DeBruyne with prejudice.

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) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted, including Respondents E. Joseph McDonnell, John S. Buchanan, Luis F. Ramirez, Michael J. O'Leary, and Melinda L. De Bruyne's requests for expungement, 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	= \$ 300.00
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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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

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:

Four (4) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 4,500.00
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Pre-hearing conferences:	November 11, 2004	1 session
	January 21, 2005	1 session
	July 20, 2005	1 session
	August 5, 2005	1 session

Six (6) Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
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Hearings:	February 28, 2006	2 sessions
	March 1, 2006	2 sessions
	March 2, 2006	2 sessions

Total Forum Fees	= \$11,250.00
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The Panel assessed the entire balance of the forum fees, in the amount of \$11,250.00 to Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested 64 photocopies @ \$0.50 each:	= \$	32.00
Respondent requested 1 audiotape @ \$15.00 each:	= \$	15.00

Fee Summary

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

Initial Filing Fee	= \$	300.00
<u>Administrative Costs</u>	= \$	32.00
Total Fees	= \$	332.00
<u>Less payments</u>	=	<u>\$(1,425.00)</u>
Refund Due from NASD Dispute Resolution	=	\$(1,093.00)

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

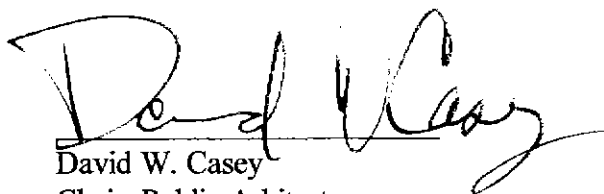
Member Fees	= \$	5,200.00
Forum Fees	=	\$11,250.00
<u>Administrative Costs</u>	= \$	15.00
Total Fees	=	\$16,465.00
<u>Less payments</u>	=	<u>\$(5,762.50)</u>
Balance Due NASD Dispute Resolution	=	\$ 10,702.50

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.

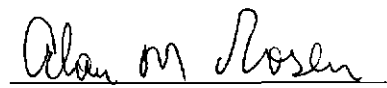
ARBITRATION PANEL

<i>David W. Casey</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Alan M. Rosen</i>	-	<i>Public Arbitrator</i>
<i>David Nielsen</i>	-	<i>Non-Public Arbitrator</i>

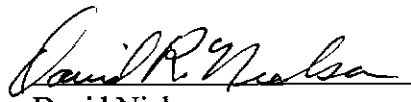
Concurring Arbitrators' Signatures


David W. Casey
Chair, Public Arbitrator

3/2/06
Signature Date


Alan M. Rosen
Public Arbitrator

3/2/06
Signature Date


David Nielsen
Non-Public Arbitrator

3/2/06
Signature Date

3/2/06
Date of Service