

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant / Counter-Respondent

Comet Enterprises, LLC

v.

04-04080
Denver, Colorado

Respondents / Counter-Claimants

Merrill Lynch, Pierce Fenner & Smith, Inc.,
and James D. Pell

and

Third-Party Claimants

Merrill Lynch, Pierce Fenner & Smith, Inc.,
and James D. Pell

v.

Third-Party Respondents

Watch Hill Capital Management, LLC,
Golden Heritage, LLC,
Progressive Financial Group, Inc.,
Claude Lefebvre and Joseph Coors, Jr.

and

Third-Party Respondent / Third-Party Counter-Claimant

Joseph Coors, Jr.

v.

Third-Party Claimants / Third-Party Counter-Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.
and James D. Pell

NATURE OF DISPUTE

Customer v. Member and Associated Person; Member and Associated Person v. Customer;
Member and Associated Person v. Customers; and Customer v. Member Firm and Associated
Person

REPRESENTATION OF PARTIES

Comet Enterprises, LLC ("Comet or Comet Enterprises") was represented by Thomas McNamara, Esq., of Davis Graham & Stubbs, LLP, Denver, Colorado.

Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill Lynch") and James D. Pell ("Pell") were represented by S. Kirk Ingebretsen, Esq., of Sander Ingebretsen & Parish, P.C., Denver, Colorado.

Watch Hill Capital Management, LLC ("Watch Hill"), Claude Lefebvre ("Lefebvre") and Joseph Coors, Jr. ("Coors") were represented by Thomas McNamara, Esq., of Davis Graham & Stubbs, LLP, Denver, Colorado.

Golden Heritage, LLC ("Golden Heritage") was represented by S. Lee Terry, Esq., of Davis Graham & Stubbs, LLP, Denver, Colorado.

Progressive Financial Group, Inc. ("Progressive") was represented by David A. Zisser, Esq., of Issacson Rosenbaum, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about June 8, 2004. The Submission Agreement of Comet Enterprises was signed on or about June 7, 2004 by Joseph Coors, Jr., Agent and Representative of Golden Heritage, LLC, a member of Comet Enterprises, LLC.

A Statement of Answer Counterclaim and Third-Party Claim was filed jointly by Merrill Lynch and Pell on or about August 4, 2004. The Submission Agreement of Merrill Lynch was signed on or about July 26, 2004. The Submission Agreement of Pell was signed on or about July 16, 2004.

Comet Enterprises filed a Reply to Merrill Lynch and Pell's Counterclaim on or about August 16, 2004.

Golden Heritage filed a Response to Merrill Lynch and Pell's Third-Party Claim on or about September 17, 2004.

Progressive Financial filed a Response to Merrill Lynch and Pell's Third-Party Claim on or about on or about October 13, 2004. The Submission Agreement of Progressive Financial was signed on or about October 13, 2004.

A First Amended Answer, Counterclaim and Third-Party Claim was filed jointly by Merrill Lynch and Pell, on or about November 19, 2004.

Merrill Lynch and Pell filed a Motion for Leave to File a Second Amended Answer, Counterclaim, and Third-Party Claim on or about April 7, 2005. Comet Enterprises and Golden Heritage filed an Opposition to Merrill Lynch and Pell's Motion for Leave on or about April 22, 2005. Progressive Financial filed an Opposition to Merrill Lynch and Pell's Motion for Leave on or about April 22, 2005. Merrill Lynch and Pell filed a Reply to their Motion for Leave on or about April 26, 2005.

A Reply was filed jointly by Comet Enterprises, Golden Heritage and Coors to Merrill Lynch and Pell's Second Amended Answer, Counterclaim and Third-Party Claim on or about June 17, 2005.

Progressive Financial filed a Reply to Merrill Lynch and Pell's Second Amended Answer, Counterclaim and Third-Party Claim on or about June 17, 2005.

Coors filed a Third-Party Counterclaim on or about June 17, 2005.

Merrill Lynch and Pell filed a Reply to Coors' Third-Party Counterclaim on or about June 30, 2005.

Merrill Lynch and Pell filed a Dispositive Motion to Dismiss Certain Claims on or about October 11, 2005. Comet Enterprises filed an Opposition to Merrill Lynch and Pell's Dispositive Motion on or about November 10, 2005. Merrill Lynch and Pell filed a Reply to Comet's Opposition to their Dispositive Motion on or about November 18, 2005.

CASE SUMMARY

Comet Enterprises asserted causes of action including the following: breach of fiduciary duty, breach of contract, failure to execute, failure to supervise, unauthorized trading, misrepresentations and omission of facts. Comet Enterprises alleged that Merrill Lynch and Pell disregarded Comet Enterprises' express instructions to invest its funds only in "AA or better rated bonds"; failed to honor Comet Enterprises' account restrictions from the account opening documents; engaged in unauthorized transactions; and breached their fiduciary duties to Comet Enterprises.

Merrill Lynch and Pell denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Comet failed to state a claim upon which relief could be granted; Comet's claims are barred by the provisions of the Uniform Commercial Code; Comet's claims are barred by the doctrines of waiver, release and estoppel; Comet's claims are barred by its agreement to indemnify and hold Merrill Lynch harmless for relying upon any orders or instructions received by Merrill Lynch from any of the authorized representatives on the Comet account; Comet's claims are barred by the contributory or comparative negligence of Comet and others; Comet's claims are barred by its own fraudulent misrepresentations and omissions; Merrill Lynch and Pell acted reasonably, in good faith, and without malice, reckless disregard, or negligence; Comet's account was a nondiscretionary account and there was no confidential or special relationship that would give rise to a fiduciary duty, therefore, Merrill Lynch and Pell did not owe any fiduciary duties to Comet; Comet's claims are barred because Merrill Lynch and Pell did not owe or assume any duty

to monitor transactions conducted in other customers' accounts; and Comet's claims are barred because of its lack of reasonable reliance.

Merrill Lynch and Pell's Counterclaim asserted causes of action including the following: fraud, non-disclosure or concealment; promises as false representations; negligent misrepresentations; and breach of contract. Merrill Lynch and Pell's Third-Party Claim asserted causes of action including the following: fraud, non-disclosure or concealment; promises as false representations; negligent misrepresentations; and breach of contract. Merrill Lynch and Pell asserted that, rather than engaging in a conservative investment strategy which was suggested by its reference to "trading AA or better fixed income products," Comet Enterprises was actually created because of Coors' desire to respond to the tumbling stock market by pursuing "alternative strategies" and "aggressive business opportunities." Merrill Lynch and Pell alleged that Lefebvre wrongly represented to Comet that by trading AA or better-rated bonds, it would generate a minimum of 100 percent profit per week. Merrill Lynch and Pell further alleged that, based on their reliance on the false and incomplete information supplied by Comet Enterprises and its agents, Merrill Lynch and Pell are not responsible for any losses incurred as a result.

Comet Enterprises denied the allegations set forth in the Merrill Lynch and Pell's Counterclaim and asserted affirmative defenses including the following: the Counterclaim is barred because Merrill Lynch and Pell failed to state a claim upon which relief can be granted; the Counterclaim is barred by contract and the breach of contract by Merrill Lynch and Pell; the Counterclaim is barred because Comet acted in good faith, and without malice, reckless disregard or negligence; the Counterclaim is barred because of the fraudulent representations, misrepresentations and fraudulent omissions of Merrill Lynch and Pell; the Counterclaim is barred because of Merrill Lynch and Pell's violations of governmental and self-regulatory agency rules and regulations; the Counterclaim is barred because of the lack of reasonable reliance of Merrill Lynch and Pell; and the Counterclaim is barred by the failure of Merrill Lynch and Pell to plead fraud with particularity.

Golden Heritage denied the allegations set forth in the Merrill Lynch and Pell's Third-Party Claim and asserted affirmative defenses including the following: the Third-Party Claim is barred by contract and the breach of contract by Merrill Lynch and Pell; the Third-Party Claim is barred because of the bad faith of Merrill Lynch and Pell; the Third-Party Claim is barred because of the contributory and comparative negligence of Merrill Lynch, Pell and others; the Third-Party Claim is barred because of the breach of fiduciary duties by Merrill Lynch and Pell; and the Third-Party Claim is barred by the doctrines of estoppel, waiver and laches.

Progressive Financial denied the allegations set forth in Merrill Lynch and Pell's Third-Party Claim and incorporated by reference the Reply to the Counterclaim filed by Comet Enterprises.

Coors asserted the following causes of action in his Third-Party Counterclaim: abuse of process and malicious prosecution. The causes of action related to Coors' allegation that Merrill Lynch filed a separate federal court action against him relating to this arbitration case. Coors alleged that Merrill

Lynch sought to secure procedures and discovery through the federal action, which it could not have secured in the NASD arbitration. Coors further alleged that the federal action caused substantial damages to him including his attorneys' fees and costs of defense.

Merrill Lynch and Pell denied the allegations set forth in Coors' Third-Party Counterclaim and stated that the Counterclaim for abuse of process and/or malicious prosecution is unsupported by the facts or the law.

RELIEF REQUESTED

Comet Enterprises requested an award of \$6,016,552.45 in compensatory damages, plus interest, lost business opportunities damages, attorneys' fees, costs and any other relief the panel deemed just and equitable.

Merrill Lynch and Pell requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested the panel order that all records relating to this case be expunged from Pell's registration records maintained by the Central Registration Depository ("CRD"). In Merrill Lynch and Pell's Counterclaim and Third-Party Claim, they requested an award of unspecified damages, punitive damages and any other relief the Panel deemed appropriate.

Comet Enterprises requested that the Counterclaim asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

Progressive Financial requested that the Third-Party Claim asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

Golden Heritage requested that the Third-Party Claim asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

In Coors' Third-Party Counterclaim, he requested to be awarded unspecified damages, attorneys' fees and any other relief the panel deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

Golden Heritage, LLC did not file with the NASD Dispute Resolution properly executed submission to arbitration but having answered the Third-Party Claim, and having appeared through counsel at the hearings, is bound by the determination of the arbitration panel on all issues submitted.

Joseph Coors, Jr., did not file with the NASD Dispute Resolution a properly executed submission to arbitration but having answered the Third-Party Claim, having asserted a Third-Party Counterclaim

and having appeared at the hearings, is bound by the determination of the arbitration panel on all issues submitted.

Watch Hill Capital Management, LLC, and Claude Lefebvre are not members of NASD. Watch Hill Capital Management, LLC, and Claude Lefebvre did not voluntarily submit to NASD arbitration, nor were contracts to arbitrate disputes with Watch Hill Capital Management, LLC, and Claude Lefebvre presented. Therefore, Watch Hill Capital Management, LLC, and Claude Lefebvre are not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Watch Hill Capital Management, LLC's and Claude Lefebvre's voluntary submission, NASD does not have jurisdiction over this party.

On or about May 9, 2005, the Panel granted Merrill Lynch and Pell's Motion for Leave to file an Amended Answer, Counterclaim and Third-Party Claim.

On or about December 1, 2005, the Panel denied Merrill Lynch and Pell's Dispositive Motion.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Merrill Lynch, Pierce Fenner and Smith, Inc., and James D. Pell, are jointly and severally liable for and shall pay to Comet Enterprises, LLC, compensatory damages of Seven Hundred Ninety Thousand Dollars and No Cents (\$790,000.00);
2. Merrill Lynch, Pierce Fenner and Smith, Inc., and James D. Pell's Counterclaim, is denied and dismissed with prejudice in its entirety;
3. Merrill Lynch, Pierce Fenner and Smith, Inc., and James D. Pell's Third-Party Claim, is denied and dismissed with prejudice in its entirety;
4. Joseph Coors, Jr.'s Third-Party Counterclaim, is denied and dismissed with prejudice in its entirety;
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including expungement, are denied with prejudice; and

6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600
Counterclaim / Third-Party Claim filing fee (Merrill Lynch and Pell)	= \$ 500
Third-Party Counterclaim filing fee (Coors)	= \$ 250

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. In this matter, the member firm is Merrill Lynch, Pierce Fenner & Smith, Inc.

Member surcharge	= \$ 3,350
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,500

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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) Decision on discovery-related motion on the papers by the panel x \$600.00

Respondents submitted one discovery-related motion (Motion for a Protective Order) = \$ 600

One (1) Pre-hearing session with the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: August 10, 2005 1 session

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: May 5, 2005 1 session

Twenty (20) Hearing sessions with Panel x \$ 1,200 = \$ 24,000

Hearing Dates:

December 19, 2005	2 sessions
December 20, 2005	3 sessions
December 21, 2005	2 sessions
December 22, 2005	2 sessions
January 9, 2006	2 sessions
January 10, 2006	3 sessions
January 11, 2006	3 sessions
January 14, 2006	2 sessions
January 15, 2006	1 session

Total Forum Fees = \$ 26,250

The Arbitration Panel has assessed \$ 13,125 of the forum fees to Comet Enterprises, LLC.

The Arbitration Panel has assessed \$ 13,125 of the forum fees to Merrill Lynch, Pierce Fenner & Smith, Inc.

FEE SUMMARY

Claimant, Comet Enterprises, LLC, is liable for:

Initial Filing Fee	= \$ 600
<u>Forum Fees</u>	<u>= \$ 13,125</u>
Total Fees	= \$ 13,725
<u>Less payments</u>	<u>= \$ 1,800</u>
Balance Due NASD Dispute Resolution	= \$ 11,925

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

Member Fees	= \$ 9,600
<u>Forum Fees</u>	<u>= \$ 13,125</u>
Total Fees	= \$ 22,725
<u>Less payments</u>	<u>= \$ 15,300</u>
Balance Due NASD Dispute Resolution	= \$ 7,425

Counterclaimants / Third-Party Claimants, Merrill Lynch, Pierce Fenner & Smith, Inc., and James D. Pell, are jointly and severally liable for:

Counterclaim / Third-Party Claim Filing Fee	= \$ 500
Total Fees	= \$ 500
Less payments	= \$ 500
Balance Due NASD Dispute Resolution	= \$ 0

Counterclaimant, Joseph Coors, Jr., is liable for:

Third-Party Counterclaim Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 1,250
Balance Refunded By NASD Dispute Resolution	= \$ 1,000

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

ARBITRATION PANEL

Judith A.W. Ferris - Public Arbitrator, Presiding Chair
Malcolm T. Cleland - Public Arbitrator
Burt F. Mugavero - Non-Public Arbitrator

Concurring Arbitrators:

Malcolm T. Cleland
Public Arbitrator

Signature Date

Burt F. Mugavero
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator:

Judith A.W. Ferris
Public Arbitrator, Presiding Chair

Signature Date

2/10/06
Date of Service (NASD use only)

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Counterclaim / Third-Party Claim Filing Fee	= \$ 500
Total Fees	= \$ 500
Less payments	= \$ 500
Balance Due NASD Dispute Resolution	= \$ 0

Counterclaimant, Joseph Coors, Jr., is liable for:

Third-Party Counterclaim Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 1,250
Balance Refunded By NASD Dispute Resolution	= \$ 1,000

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Counterclaimant, Joseph Coors, Jr., is liable for:

Third-Party Counterclaim Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 1,250
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Non-Public Arbitrator

Signature Date

2/9/06
Signature Date

Dissenting Arbitrator:

Judith A.W. Ferris
Public Arbitrator, Presiding Chair

Signature Date

2/15/06
Date of Service (NASD use only)

Counterclaim / Third-Party Claim Filing Fee	= \$ 500
Total Fees	= \$ 500
Less payments	= \$ 500
Balance Due NASD Dispute Resolution	= \$ 0

Counterclaimant, Joseph Coors, Jr., is liable for:

Third-Party Counterclaim Filing Fee	= \$ 250
Total Fees	= \$ 250
Less payments	= \$ 1,250
Balance Refunded By NASD Dispute Resolution	= \$ 1,000

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Non-Public Arbitrator

Signature Date

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Judith A.W. Ferris
Public Arbitrator, Presiding Chair

2-10-06

Signature Date

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