

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Nicholas J. Moraitis

Case Number: 04-04690

Name of the Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

Hearing Site: Pittsburgh, Pennsylvania

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant, Nicholas J. Moraitis, hereinafter referred to as "Claimant", was represented by Stephen H. Lebovitz, Esq., Lebovitz & Lebovitz PA, Pittsburgh, Pennsylvania.

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., hereinafter referred to as "Respondent", was represented by Paul T. Chryssikos, Esq. and G. Jeffery Boujoukos, Esq., Morgan Lewis & Bockius LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on June 29, 2003.

Claimant signed the Uniform Submission Agreement on June 18, 2004.

Claimant signed revised Uniform Submission Agreement on November 9, 2005.

Statement of Answer filed by Respondent on September 24, 2004.

A representative of Respondent signed the Uniform Submission Agreement on September 24, 2004.

Respondent filed a Motion to Dismiss, or, in the Alternative, to Compel Claimant to Respond to Respondent's Discovery Requests on July 28, 2005.

Claimant filed a Response and Answer to Respondent's Motion to Dismiss on August 16, 2005.

Respondent filed a Reply to Claimant's Response to the Motion to Dismiss on September 20, 2005.

CASE SUMMARY

Claimant asserted the following causes of action, among others: negligence, breach of fiduciary duty, breach of contract, fraud, and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law. The causes of action relate of the purchase and sale of unspecified securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory negligence, failure to state a claim upon which relief may be granted, ratification, assumption of the risk, no proximate cause, no implied contract between the parties, failure to mitigate, waiver, and claims

are barred by the applicable statutes of limitations and the doctrine of laches.

RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages in the amount of \$347,609.23, treble damages, interest, costs of suit, and attorney's fees.

Respondent in its Statement of Answer requested that the Statement of Claim be dismissed in its entirety, that the costs of this proceeding be assessed against Claimant, and such other relief which the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent's Motion to Dismiss Action, or, in the Alternative, to Compel Claimant to Respond to Respondent's Discovery Requests was granted in part and denied in part. As indicated in the September 22, 2005 order, the Panel granted the portion of the Motion compelling Claimant to respond to Respondent's discovery requests, but denied the portion seeking to dismiss the Claimant's case. In addition, the Panel granted Respondent reasonable costs relating to the filing and pursuit of Respondent's Motion to Dismiss Action or to Compel Discovery.

At the hearing, parties raised the issue of the amount of attorney's fees to be awarded to Respondent on its Motion to Compel Discovery and pursuant to the Panel's September 22, 2005 order. The Panel awarded \$2,619.02 to Respondent to be paid by Claimant.

The Statement of Claim named Merrill Lynch & Co. as the Respondent. At the hearing, the pleadings were orally amended to substitute Merrill Lynch Pierce Fenner & Smith, Inc. as the appropriate Respondent. Following the hearing, the Panel ordered Claimant to file a Uniform Submission Agreement naming Merrill Lynch Fenner & Smith, Inc., as the Respondent.

At the hearing, Respondent made a Motion to Dismiss at the conclusion of Claimant's case; the Panel denied the motion after oral arguments.

AWARD

After considering the pleadings, and 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. Respondent is liable to and shall pay to Claimant compensatory damages in the amount of \$15,495.40, plus simple interest at a rate of 6% per annum from February 1, 2003 until the date of payment in full;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed in this award; and

3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

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:

Two (2) Pre-hearing sessions with Panel @ \$ 1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
January 18, 2005	1 session
September, 22, 2005	1 session

Eight (8) Hearing sessions @ \$ 1,200.00	= \$ 9,600.00
Hearing Dates:	
October 25, 2005	2 sessions
October 26, 2005	2 sessions
October 27, 2005	2 sessions
October 28, 2005	2 sessions

Total Forum Fees	= \$ 12,000.00
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1. The Panel has assessed \$ 6,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 5,400.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 7,100.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 13,950.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 5,400.00

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

ARBITRATION PANEL

Michael McDowell	-	Public Arbitrator, Presiding Chairperson
James Puhala	-	Public Arbitrator, Panelist
Donald Olszewski	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Michael McDowell

Public Arbitrator, Presiding Chairperson

11/10/05
Signature Date

James Puhala

Public Arbitrator, Panelist

Signature Date

Donald Olszewski

Non-Public Arbitrator, Panelist

Signature Date


11/15/05

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

Concurring Arbitrators' Signatures

Michael McDowell
Public Arbitrator, Presiding Chairperson

Signature Date


James Puhala
Public Arbitrator, Panelist

11/11/2005
Signature Date

Donald Olszewski
Non-Public Arbitrator, Panelist

Signature Date

11/15/05
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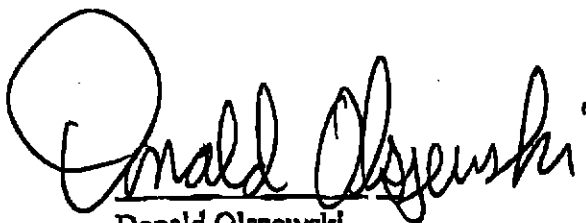
Concurring Arbitrators Signatures

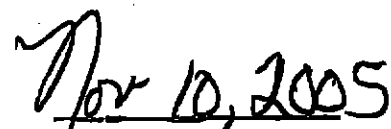
Michael McDowell
Public Arbitrator, Presiding Chairperson

Signature Date

James Puhala
Public Arbitrator, Panelist

Signature Date


Donald Olszewski
Non-Public Arbitrator, Panelist


Signature Date

11/15/05
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