

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Walter B. Connolly, Jr.

and

Case Number: 04-04860
Hearing Site: Detroit, Michigan

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
and Craig E. Dyson

NATURE OF DISPUTE

Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Walter B. Connolly, Jr. ("Claimant") was represented by William J. Rogers, Esq., Connolly Rodgers & Scharman, PLLC, Washington DC, and Edward P. Henneberry, Esq., Bregman, Berbert, Schwartz & Gilday, LLC, Bethesda, Maryland.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Craig E. Dyson ("Dyson"), hereinafter collectively referred to as "Respondents," were represented by Brett S. Krantz, Esq., and Ari H. Jaffe, Esq., Kohrman Jackson & Krantz PLL, Cleveland, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about July 9, 2004. The Submission Agreement of Claimant was signed on or about July 1, 2004.

The Consolidated Answer was filed jointly by Respondents on or about October 26, 2004. The Submission Agreement of MLPFS was signed on or about August 11, 2004. The Submission Agreement of Dyson was signed on or about September 2, 2004.

Claimant requested a transfer of venue to Washington DC, on or about August 30, 2004. Respondents responded to the request on or about October 11, 2004. Claimant withdrew his request on or about October 15, 2004. Respondents filed a Motion to Transfer on or about November 22, 2004. Claimant filed a Brief in Opposition to the Motion on or about December 10, 2004. Respondents filed a Reply Brief in Support of Motion to Transfer on or about December 28, 2004.

Respondents filed a Motion for Reconsideration of the Motion to Transfer on or about April 20, 2005. Claimant filed a Response to the Motion on or about May 12, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: negligent supervision; respondeat superior; breach of contract; breach of fiduciary duty; negligent supervision and breach of fiduciary duty. Claimant asserted that Respondents sold his diversified portfolio without authorization and purchased high-risk, technology laden stocks including Internet Corp. Group, Inc., JDS Unibase Corp., Micron Technology, Inc., Netro Corp., Exodus Communications and Global Telesys Group which were unsuitable for Claimant and in contravention of his conservative investment objectives and which were purchased through the improper use of margin.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrines of estoppel and/or waiver; contrary to his characterization as an unsophisticated investor, Claimant is an educated individual and investor who knowingly made investments that included elements of risk; the doctrines of contributory and comparative negligence and assumption of risk bar Claimant's claims; and all transactions were suitable for Claimant.

RELIEF REQUESTED

Claimant requested an award in the amount of \$800,000.00 in compensatory damages, plus \$1.2 million dollars in lost future earnings, \$10 million dollars in punitive damages, interest, attorneys' fees, costs and any other relief the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

In its Order entered on January 5, 2005, the panel denied Respondents' Request to Transfer Venue.

In its Order entered on May 20, 2005, the panel denied Respondents' Motion for Reconsideration of the Motion to Transfer Venue.

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 original(s) remain on file with NASD Dispute Resolution ("NASD").

FINDINGS OF FACT

After giving due consideration to the testimony and exhibits, the Panel finds, for among other reasons, that:

Unauthorized trading occurred in Claimant's non-discretionary account; Merrill Lynch's supervision was faulty; confirmations were admittedly mis-marked by Merrill Lynch personnel, and as a result the unauthorized trades were disguised, and due to the faulty supervision, were not timely discovered by Merrill Lynch.

Respondent's expert testified brokers have a fiduciary duty to the customer. The Panel finds there was a breach of fiduciary duty. The Panel finds that Mr. Dyson was obligated to obtain authorization for each trade and did not do so; furthermore, Respondent's expert testified the broker must refrain from self-dealing, e.g., he must put the customer first. Mr. Dyson put himself first as partially evidenced by the "trading-ahead," even Merrill Lynch agrees occurred, as admitted by its untimely offer to return \$14,000 to Connelly as a result of such trading-ahead and which Merrill Lynch did not investigate/discover until much later.

The Panel also finds that the Claimant is not free of fault contributing to his total losses by, among other reasons, indicating in the 1999 new account opening statement that his objectives were "aggressive." Claimant, although not a sophisticated investor, is a well-educated lawyer and otherwise intelligent adult, and does not deny that he received confirmations and monthly statements and either failed to read them or ignored their contents and failed to register any complaint, until some time after the trades occurred, regarding the over-emphasis in high tech stocks bought for his account.

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.) Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimant, Walter B. Connolly, Jr., the sum of \$203,400.00 in compensatory damages;
- 2.) Respondent, Craig E. Dyson, is liable for and shall pay to Claimant, Walter B. Connolly, Jr., the sum of \$22,600.00 in compensatory damages;

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

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 = \$ 600.00

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

Member surcharge = \$ 3,750.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,500.00

Adjournment Fees

Adjournments requested during these proceedings:

September 21-22, 2005, adjournment by Claimants = \$ 1,200.00
September 26, 2005, adjournment requested by Respondents = \$ 1,200.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

September 21-22, adjournment requested on September 20, 2005 = \$ 300.00
September 26, 2005, adjournment requested on September 23, 2005 = \$ 300.00

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 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conferences: September 19, 2005 1 session	
Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: January 20, 2005 1 session	
September 16, 2005 1 session	
Seventeen (17) Hearing sessions x \$1,200.00	= \$20,400.00
Hearing Dates: September 7, 2005 2 sessions	
September 8, 2005 2 sessions	
September 9, 2005 1 sessions	
September 12, 2005 2 sessions	
September 13, 2005 2 sessions	
September 27, 2005 3 sessions	
September 28, 2005 3 sessions	
September 29, 2005 2 sessions	
Total Forum Fees	= \$23,250.00

The Arbitration Panel has assessed \$11,625.00 of the forum fees to Walter B. Connolly, Jr.

The Arbitration Panel has assessed \$11,625.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Walter B. Connolly, Jr., is liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fees	= \$ 1,200.00
Three-Day Cancellation Fees	= \$ 300.00
Forum Fees	= \$ 11,625.00
Total Fees	= \$ 13,725.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 11,925.00

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

Member Fees	= \$ 10,000.00
Forum Fees	= \$ 11,625.00
Total Fees	= \$ 21,625.00
<u>Less payments</u>	<u>= \$ 10,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 11,625.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Craig E. Dyson, are jointly and severally liable for:

Adjournment Fees	= \$ 1,200.00
Three-Day Cancellation Fees	= \$ 300.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

ARBITRATION PANEL

Stuart Sinai, Esq. - Public Arbitrator, Presiding Chair
Brace K. Case, Esq. - Public Arbitrator
Donald L. Richardson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Stuart Sinai, Esq.
Stuart Sinai, Esq.
Public Arbitrator, Presiding Chair

10/08/05
Signature Date

Brace K. Case, Esq.
Public Arbitrator

Signature Date

/s/ Donald L. Richardson
Donald L. Richardson
Non-Public Arbitrator

10/10/05
Signature Date

10/10/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-04680
Award Page 6 of 9

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Craig E. Dyson are jointly and severally liable for:

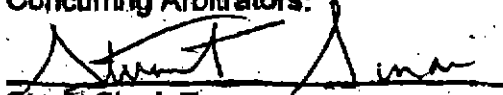
Adjournment Fees	= \$ 1,200.00
Three-Day Cancellation Fees	= \$ 300.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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ARBITRATION PANEL

Stuart Sinal, Esq. - Public Arbitrator, Presiding Chair
Brace K. Case, Esq. - Public Arbitrator
Donald L. Richardson - Non-Public Arbitrator

Concurring Arbitrators:


Stuart Sinal, Esq.
Public Arbitrator, Presiding Chair

Brace K. Case, Esq.
Public Arbitrator

Donald L. Richardson
Non-Public Arbitrator

Date of Service (For NASD office use only)

10/8/2005

Signature Date

Signature Date

Signature Date

NASD Dispute Resolution
Arbitration No. 04-04860
Award Page 6 of 8

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Craig E. Dyson are jointly and severally liable for:

Adjournment Fees	= \$ 1,200.00
Three-Day Cancellation Fees	= \$ 300.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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ARBITRATION PANEL

Stuart Sinai, Esq. - Public Arbitrator, Presiding Chair
Brace K. Case, Esq. - Public Arbitrator
Donald L. Richardson - Non-Public Arbitrator

Concurring Arbitrators:

Stuart Sinai, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Brace K. Case, Esq.
Public Arbitrator

Signature Date



Donald L. Richardson
Non-Public Arbitrator



Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-04860
Award Page 6 of 6

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Craig E. Dyson, are jointly and severally liable for:

Adjournment Fees	= \$ 1,200.00
<u>Three-Day Cancellation Fees</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 1,500.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,500.00

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

ARBITRATION PANEL

Stuart Sinai, Esq. - Public Arbitrator, Presiding Chair
Brace K. Case, Esq. - Public Arbitrator
Donald L. Richardson - Non-Public Arbitrator

Concurring Arbitrators:

Stuart Sinai, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Brace K. Case, Esq.
Public Arbitrator

10/11/05

Signature Date

Donald L. Richardson
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)