

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Douglas Berge

v.

04-05281

Minneapolis, Minnesota

Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

Nature of Dispute: Customer v. Member

REPRESENTATION OF PARTIES

Douglas Berge ("Claimant") was represented by Jon J. Jensen, Esq., of Pearson Christensen, PLLP, Grand Forks, North Dakota.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent") was represented by Robert B. Baker, Esq., of Bingham McCutchen, LLP, Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about June 28, 2004. The Submission Agreement of Claimant was signed on or about July 9, 2004.

The Statement of Answer was filed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., on or about October 8, 2004. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about August 25, 2004.

Respondent filed a Motion to Exclude Evidence Presented by Claimant on or about July 5, 2005. Claimant filed a Response in Opposition on or about July 15, 2005. Respondent filed a Reply in Support on or about July 20, 2005.

Respondent filed a Motion to Preclude Claimant from Offering any Documents or Testimony Not Specifically Identified in Claimant's Twenty Day Exchange on or about July 13, 2005. Claimant filed a Response in Opposition on or about July 15, 2005. Respondent filed a Reply in Support on or about July 20, 2005.

CASE SUMMARY

Claimant asserted causes of action including the following: misrepresentation, omissions of fact and breach of fiduciary duty. The causes of action related to Claimant's purchase of technology stocks, including: Infospace, Inc.; GT Interactive Software; Lycos, Inc.; Merrill Lynch Focus Twenty and Internet Capital Group Inc. Claimant alleged that Respondent misrepresented the actual market status of the stocks based on an inaccurate internal stock rating system. Claimant further alleged that the stock ratings were predicated on the overvaluing of stocks to protect Respondent's investment banking relationship with outside companies.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred by waiver, ratification, acquiescence and estoppel; Respondent was not the proximate cause of Claimant's alleged losses; Claimant's claims are barred, in whole or in part, by the doctrine of contributory negligence or the doctrine of comparative fault; and Respondent conducted itself in a professional manner, did not breach any duties owed to Claimant, and acted in good faith and without knowledge of any wrongdoing or improper activity in the Claimant's account.

RELIEF REQUESTED

Claimant requested an award of \$671,166.51 in compensatory damages, plus \$3,000,000 in punitive damages, attorneys' fees, interest, costs and any other relief the panel deemed just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On or about July 26, 2005, Claimant informed NASD Dispute Resolution that he was withdrawing his claim relating to the GT Interactive Software.

At the arbitration hearing, the panel denied Respondent's Motion to Preclude. In addition, the arbitrators granted Respondent's Motion to Exclude as to Claimant's claims regarding the Focus Twenty investment, but denied the remainder of Respondent's 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. Claimant's claims, each and all, are denied and dismissed with prejudice in their entirety;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
3. 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 fee for each claim:

Initial claim filing fee = \$ 600

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 = \$ 2,800
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 5,000

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:

Two (2) Pre-hearing sessions with Panel x \$ 1,200 = \$ 2,400

Pre-hearing conferences:	12/17/2004	1 session
	07/26/2005	1 session

Four (4) Hearing sessions with Panel x \$ 1,200 = \$ 4,800

Hearing Dates:	07/27/2005	2 sessions
	07/28/2005	2 sessions

Total Forum Fees	= \$ 7,200
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The Arbitration Panel has assessed \$ 3,600 of the forum fees to Douglas Berge.

The Arbitration Panel has assessed \$ 3,600 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

FEE SUMMARY

Claimant, Douglas Berge, is liable for:

Initial Filing Fee	= \$ 600
<u>Forum Fees</u>	= \$ 3,600
Total Fees	= \$ 4,200
<u>Less payments</u>	= \$ 1,800
Balance Due NASD Dispute Resolution	= \$ 2,400

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

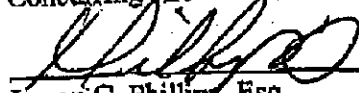
Member Fees	= \$ 8,550
<u>Forum Fees</u>	= \$ 3,600
Total Fees	= \$ 12,150
<u>Less payments</u>	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 3,600

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

Lavon C. Phillips, Esq. - Public Arbitrator, Presiding Chair
Kerry C. Koep, Esq. - Public Arbitrator
Julie A. Hennen - Non-Public Arbitrator

Concurring Arbitrators:



Lavon C. Phillips, Esq.
Public Arbitrator, Presiding Chair

08-06-05

Signature Date

Kerry C. Koep, Esq.
Public Arbitrator

Signature Date

Julie A. Hennen
Non-Public Arbitrator

Signature Date

8/3/05

Date of Service (NASD use only)

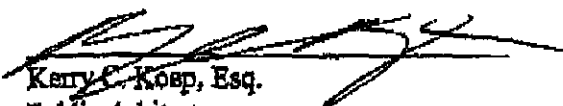
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Public Arbitrator, Presiding Chair

Signature Date



Kerry C. Koep, Esq.
Public Arbitrator

8/5/05

Signature Date

Julie A. Hennen
Non-Public Arbitrator

Signature Date

8/2/05

Date of Service (NASD use only)

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Julie A. Hennen
Non-Public Arbitrator

8/5/05

Signature Date

2/2/05

Date of Service (NASD use only)