
**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant

Richard Marmer

Case Number: 04-06374

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith Incorporated
John Lacy

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Richard Marmer, hereinafter referred to as "Claimant", was not represented in this arbitration proceeding (his former counsel having withdrawn on or about March 28, 2005) but Claimant was represented by counsel in connection with the settlement of the case and this Stipulated Award.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and John Lacy ("Lacy") hereinafter referred to as "Respondents": Judith O'Brien, Esq. and Elena Parent, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: August 30, 2004.

Claimant signed the Uniform Submission Agreement: August 9, 2004.

Statement of Answer filed by Respondents on or about: December 1, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: October 5, 2004.

Respondent Lacy signed the Uniform Submission Agreement: December 1, 2004.

Motion to Strike Settlement Agreements and the Dinallo Affidavit filed by Respondents on or about: December 1, 2004.

Response to Motion to Strike Settlement Agreements and the Dinallo Affidavit filed by Claimant on or about: December 7, 2004.

Reply Memorandum in Support of their Motion to Strike Settlement Agreements and the Dinallo Affidavit filed by Respondents on or about: February 15, 2005.

Motion to Stay filed by Claimant on or about: March 29, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of industry rules; 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; 5) negligence; and, 6) failure to supervise. The causes of action relate to the purchase of various stocks including, but not limited to, E Digital Corp.,

Mail.com Inc., Ericsson, CMGI Inc., Pacific Internet Ltd., Cisco Systems, China.com, Lucent Technologies, Qwest Communications and Sun Microsystems in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$200,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, costs and for such other relief as this Panel deemed just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, assessment of all costs and forum fees against Claimant and a request that the Panel enter an order expunging this matter from the NASD Central Registration Depository (the "CRD") record of Respondent Lacy.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent's Motion to Strike Motion to Strike Settlement Agreements and the Dinallo Affidavit was never ruled on and deemed moot by the Panel.

On April 6, 2005, the Panel issued an Order that stayed this case for a period of thirty days from the date of the Order to afford Claimant to retain new counsel, should he choose to do so.

On or about March 24, 2006, the parties notified NASD Dispute Resolution that they had settled this matter and would be submitting a proposed Stipulated Award with a request for the expungement of the NASD CRD record of Respondent Lacy.

On or about April 24, 2006, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award with a request for the expungement of the NASD CRD record of Respondent Lacy.

On May 11, 2006, the Panel granted the parties' request for a Stipulated Award with request for expungement of the NASD CRD record of Respondent Lacy.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated Award may be entered.

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

Claimant and Respondents have informed the Panel that they have resolved their differences and

that Claimant has voluntarily dismissed his claim against Respondents, with prejudice.

Pursuant to NASD Rule 2130, the Panel makes an affirmative finding that the claim against Respondent Lacy is clearly erroneous, that Respondent Lacy was not involved in any investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds and the claim against Respondent Lacy is false. Therefore, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Lacy's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Lacy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

All claims against Respondents are hereby dismissed, with prejudice.

The parties shall bear their respective costs, including attorneys' fees, except as fees are specifically addressed below.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 300.00

The Panel has waived Claimant's filing fee in the amount of \$300.00

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. Accordingly, Respondent Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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|----------------------------|----------------------|
| Member surcharge | = \$ 1,700.00 |
| Pre-hearing process fee | = \$ 750.00 |
| <u>Hearing process fee</u> | <u>= \$ 2,750.00</u> |
| Total Member Fees | = \$ 5,200.00 |

Adjournment Fees

No requests for adjournments were granted in this matter.

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:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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:

Five (5) Pre-hearing sessions with the Panel @ \$1,125.00 = \$5,625.00

| | | |
|--------------------------|--------------------|-----------|
| Pre-hearing conferences: | February 25, 2005 | 1 session |
| | September 27, 2005 | 1 session |
| | November 14, 2005 | 1 session |
| | January 19, 2006 | 1 session |
| | March 3, 2006 | 1 session |

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|------------------|--------------|
| Total Forum Fees | = \$5,625.00 |
|------------------|--------------|

The Panel has assessed \$3,937.50 of the forum fees to Claimant.

The Panel has assessed \$1,687.50 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

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| Forum Fees | = \$ 3,937.50 |
| Total Fees | = \$ 3,937.50 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 3,937.50 |

Respondent Merrill Lynch is solely liable for:

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|-------------------------------------|---------------|
| <u>Member Fees</u> | = \$ 5,200.00 |
| <u>Total Fees</u> | = \$ 5,200.00 |
| <u>Less payments</u> | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents are jointly and severally liable for:

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|-------------------------------------|---------------|
| <u>Forum Fees</u> | = \$ 1,687.50 |
| <u>Total Fees</u> | = \$ 1,687.50 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 1,687.50 |

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

ARBITRATION PANEL

| | | |
|------------------------------|---|---|
| <i>Edward Aptaker, Esq..</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Richard Kuper, Esq.</i> | - | <i>Public Arbitrator</i> |
| <i>Mary H. Cory</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

/s/
Edward Aptaker, Esq...
Public Arbitrator, Presiding Chairperson

05/22/06
Signature Date

/s/
Richard Kuper, Esq.
Public Arbitrator

05/22/06
Signature Date

/s/
Mary H. Cory
Non-Public Arbitrator

05/24/06
Signature Date

05/26/06
Date of Service (For NASD Dispute Resolution office use only)

Respondent Merrill Lynch is solely liable for:

Respondents are jointly and severally liable for:

ARBITRATION PANEL

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

5/22/06
Signature Date

Signature Date

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| Signature | Date |
|-----------|------|

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

NASD Dispute Resolution
 Arbitration No. 04-06374
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Richard Kuper, Esq.

Mary H. Cory

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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 Public Arbitrator, Presiding Chairperson

 Signature Date

Richard Kuper, Esq.
 Public Arbitrator

5-22-06
 Signature Date

Mary H. Cory
 Non-Public Arbitrator

 Signature Date

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| <i>Mary H. Cory</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures

Edward Aptaker, Esq...
Public Arbitrator, Presiding Chairperson

Signature Date

Richard Kuper, Esq.
Public Arbitrator

Signature Date

Mary H Cory

Mary H. Cory
Non-Public Arbitrator

5-24-06

Signature Date

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

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