

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Bo Hammerich

and

Case Number: 04-06842

Hearing Site: Oklahoma City, Oklahoma

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

NATURE OF DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

Bo Hammerich ("Hammerich" or "Claimant") was represented by A. Daniel Woska, Esq., Woska & Hayes, L.L.P., Oklahoma City, Oklahoma.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch" or "Respondent") was represented by Bruce W. Day, Esq., Day, Edwards, Propester & Christensen, PC, Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about September 28, 2004. The Submission Agreement of Claimant was signed on or about May 25, 2004.

The Statement of Answer was filed by Respondent, Merrill Lynch, on or about November 30, 2004. The Submission Agreement of Respondent, Merrill Lynch, was signed on or about October 17, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; misrepresentations; suitability; violation of Section 20(a) of the Exchange Act; breach of fiduciary duty; breach of contract; failure to hedge; failure to diversify; violation of Know Your Customer Rule; violation of the NASD Rules of Fair Practice, Article III; violation of Okl. Stat. Tit. 71 Section 408(a)(2)(203); and violation of the Oklahoma Consumer Protection Act. The causes of action related to the recommendation and purchase of stocks such as Exodus

Communications, SDL, Broadcom, JDS Uniphase, Inktomi, Microstrategy. Claimant alleged that Respondent recommended high tech/internet investments that were unsuitable and also failed to diversify his account, which resulted in losses in his portfolio.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred because Merrill Lynch had a good faith basis for its research opinions; Claimant's claims are barred because the risks inherent in the investments at issue were fully disclosed or known to Claimant and he assumed those risks; and Claimant's claims are barred because he failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested an award in the amount of \$500,000.00 in compensatory damages, plus punitive damages, interest, costs and attorneys' fees and other relief the Panel deemed just and proper.

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

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").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, and the post-hearing submissions, 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 dismissed with prejudice in their entirety;
- 2) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3) 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 the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 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. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge = \$1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings:

November 8-11, 2005, adjournment requested by both parties = \$1,125.00
(The Panel has waived the fee.)

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 motions on the papers
with (1) one arbitrator @ \$200.00 = \$ 200.00
Respondent submitted one discovery-related motion

One (1) Decision on discovery-related motions on the papers
with (3) three arbitrators @ \$600.00 = \$ 600.00
Respondent submitted one discovery-related motion

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: March 14, 2005 1 session	
Three (3) Hearing sessions x \$1,125.00	= \$3,375.00
Hearing Dates: March 7, 2006 2 sessions	
March 8, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$5,300.00

The Arbitration Panel has assessed \$2,650.00 of the forum fees to Bo Hammerich.

The Arbitration Panel has assessed \$2,650.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

Claimant, Bo Hammerich, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,650.00
<hr/> Total Fees	<hr/> = \$2,950.00
Less payments	= \$1,575.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$1,375.00

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

Member Fees	= \$5,200.00
Forum Fees	= \$2,650.00
<hr/> Total Fees	<hr/> = \$7,850.00
Less payments	= \$5,200.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$2,650.00

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

ARBITRATION PANEL

Robert D. Garrett, Esq. - Public Arbitrator, Presiding Chair
Cleve W. Powell - Public Arbitrator
Charles H. Lewis, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert D. Garrett, Esq.
Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

03/22/06
Signature Date

/s/ Cleve W. Powell
Cleve W. Powell
Public Arbitrator

03/24/06
Signature Date

/s/ Charles H. Lewis, Jr.
Charles H. Lewis, Jr.
Non-Public Arbitrator

03/24/06
Signature Date

03/24/06
Date of Service (For NASD office use only)

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3/22/06

Signature Date

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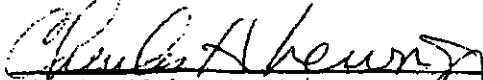
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