

**Stipulated Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Wells Fargo Investments, LLC, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated  
and Martin Hare, Respondents

Martin Hare, Counter-Claimant v. Wells Fargo Investments, LLC, Counter-Respondent

Martin Hare, Third-Party Claimant v. John J. Peluso, Michael E. Dutton, and James P. Kerr,  
Third-Party Respondents

Case Number: 04-07649

Hearing Site: Seattle, Washington

---

Nature of the Dispute: Member v. Member and Associated Person  
Associated Person v. Member  
Associated Person v. Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent  
Wells Fargo Investments, LLC ("WFI"), and Third  
Party Respondents John J. Peluso, Michael E. Dutton, and  
James P. Kerr:

Diane C. Fischer, Esq.  
Kane & Fischer, Ltd.  
Chicago, Illinois

For Respondent Merrill Lynch, Pierce,  
Fenner & Smith Incorporated ("Merrill Lynch"):

Imogene E. Hughes, Esq.  
Rubin Fortunato Harbison &  
Dougherty  
Paoli, Pennsylvania

For Respondent/Counter-Claimant/Third Party Claimant  
Martin Hare:

Martin Hare  
Pro Se  
San Diego, California

**CASE INFORMATION**

Initial Statement of Claim filed: November 2, 2004

Amended Statement of Claim filed: November 11, 2004

Wells Fargo Investments, LLC's Uniform Submission Agreement signed: November 2, 2004

Statement of Answer to Amended Statement of Claim filed by Respondent Martin Hare: January 4, 2005

Counterclaim filed by Counter-Claimant Martin Hare: January 4, 2005

Third-Party Claim filed by Third Party Claimant Martin Hare: January 4, 2005

Statement of Answer to Counterclaim filed by Counter-Respondent Wells Fargo Investments, LLC: February 25, 2005

Martin Hare's Uniform Submission Agreement signed: February 1, 2005

John J. Peluso's Uniform Submission Agreement signed: March 24, 2005

James P. Kerr's Uniform Submission Agreement signed: March 25, 2005

Michael E. Dutton's Uniform Submission Agreement signed: March 28, 2005

### **CASE SUMMARY.**

In its initial Statement of Claim, Wells Fargo Investments, LLC (hereinafter "WFI") alleged breach of contract, tortious interference with contractual relationship, misappropriation of trade secrets, breach of promissory note, and breach of relocation expense agreement as against Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated (hereinafter "Merrill Lynch") and Martin Hare.

In its Amended Statement of Claim, WFI alleged breach of promissory note and breach of relocation expense agreement as against Respondent Martin Hare.

Unless specifically admitted in his Answer, Respondent Martin Hare denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim and Third Party Claim, Counter-Claimant/Third Party Claimant Martin Hare alleged misrepresentation, breach of contract, interference with business relations, breach of the covenant of good faith and fair dealing, unjust enrichment, and cancellation of debt involving an employment agreement.

In its Statement of Answer to Martin Hare's Counterclaim and Third Party Claim, WFI denied the allegations of wrongdoing set forth in the Counterclaim and Third Party Claim.

### **RELIEF REQUESTED**

In its initial and Amended Statements of Claim, WFI requested unspecified compensatory damages, interest, and costs, including attorney's fees.

In his Answer, Counterclaim, and Third Party Claim, Martin Hare requested \$500,000.00 in compensatory damages, cancellation of any debt amount owed to WFI under the promissory note and for moving expenses, and costs, including attorney's fees.

In its Statement of Answer to Counterclaim, WFI requested dismissal of the Counterclaim in its entirety, the full amount requested in its Amended Statement of Claim, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On November 11, 2004, WFI filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On November 11, 2004, WFI dismissed with prejudice its claims for breach of contract, tortious interference with contract relationship, misappropriation of trade secrets, and its request for injunctive relief against Merrill Lynch and Martin Hare. Further, pursuant to a settlement agreement that was reached, WFI dismissed Merrill Lynch with prejudice.

On May 25, 2005, Martin Hare voluntarily dismissed all third party claims against Jack Peluso, Mike Dutton, and James Kerr.

The parties resolved their dispute arising out of, and in connection with, the aforementioned promissory note and relocation expenses by executing a settlement agreement on or about February 24, 2006. Pursuant to the terms of that Settlement Agreement, this Stipulated Award shall be signed by the arbitrators but no action will be taken by Wells Fargo to enforce the Stipulated Award unless Martin Hare fails to comply with the payment terms of the settlement agreement. Should Martin Hare abide by the terms of the settlement agreement and pay Wells Fargo the monies as agreed to, this Stipulated Award shall be deemed to be satisfied.

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

### **AWARD**

After considering the pleadings and the parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

The parties have entered into a Settlement Agreement. As part of the Settlement Agreement, the parties have consented to the following Stipulated Award:

1. Martin Hare shall pay to WFI the sum of \$130,097.10, plus interest at the rate of 5% per annum from May 24, 2006 to the date of payment, less any amounts paid by Martin Hare under the Settlement Agreement entered into between WFI and Martin Hare in February 2006.
2. Except as otherwise specified herein, each party shall bear its own costs and attorney's fees.
3. Martin Hare is liable for and shall pay to NASD Dispute Resolution one-half of any forum fees and/or hearing cancellation fees assessed by the Panel.
4. WFI is liable for and shall pay to NASD Dispute Resolution one-half of any forum fees and/or hearing cancellation fees assessed by the Panel.
5. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

WFI's filing fee	= \$ 500.00
Martin Hare's Counterclaim/Third-Party Claim filing fee	= \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events, which gave rise to the dispute, claim, or controversy. Accordingly, the member firm WFI is a party, and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,000.00

The member firm Merrill Lynch is a party, and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$ 2,250.00

**Three-Day Cancellation Fees**

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of February 28, 2006 – March 3, 2006 hearings dates: = \$ 300.00

- 1 The Panel assessed \$150.00 of the three-day cancellation fee jointly and severally to WFL.
- 2 The Panel assessed \$150.00 of the three-day cancellation fee jointly and severally to Martin Hare.

**Injunctive Relief Fees**

Injunctive Relief Fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Member firm Wells Fargo Investments, LLC is assessed:

Injunctive relief surcharge = \$ 2,500.00

**Forum Fees and Assessments**

The Panel assessed a forum fee for each session conducted. A 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. The following forum fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-hearing conference: April 18, 2005 1 session

---

**Total Forum Fees = \$ 1,125.00**

1. The Panel assessed \$562.50 of the forum fees to WFL.
2. The Panel assessed \$562.50 of the forum fees to Martin Hare.

**Fee Summary**

1. WFI is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 5,000.00
Injunctive Fee	= \$ 2,500.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 8,712.50
Retained Deposit in Accordance with Rule 10332(f) of the Code	= \$ 437.50
<u>Less payments</u>	<u>= \$(9,000.00)</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

2. Martin Hare is charged with the following fees and costs:

Counterclaim/Third-Party Claim Filing Fee	= \$ 300.00
Three-Day Cancellation Fee	= \$ 150.00
Retained Deposit in Accordance with Rule 10332(f) of the Code	= \$ 562.50
Forum Fees	= \$ 862.50
Total Fees	= \$ 1,012.50
<u>Less payments</u>	<u>= \$(2,125.00)</u>
Refund Due Martin Hare	= \$ 550.50

3. Merrill Lynch is charged with the following fees and costs:

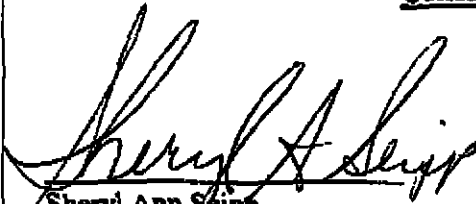
Member Fees	= \$ 2,250.00
<u>Less Payments</u>	<u>= \$ (2,250.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Sheryl Ann Seipp	-	Non-Public Arbitrator, Presiding Chair
Julie Eileen Gay	-	Non-Public Arbitrator
William W. Anderson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Sheryl Ann Seipp  
Chair, Non-Public Arbitrator

4/3/2006  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Julie Eileen Gay  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William W. Anderson  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

11/5/06  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Sheryl Ann Seipp	-	Non-Public Arbitrator, Presiding Chair
Julie Eileen Gay	-	Non-Public Arbitrator
William W. Anderson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Sheryl Ann Seipp  
Chair, Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
*Julie E. Gay*  
Julie Eileen Gay  
Non-Public Arbitrator

\_\_\_\_\_  
*4-3-06*  
Signature Date

\_\_\_\_\_  
William W. Anderson  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
*4/5/06*  
Date of Service

**ARBITRATION PANEL**

Sheryl Ann Seipp	-	Non-Public Arbitrator, Presiding Chair
Julie Eileen Gay	-	Non-Public Arbitrator
William W. Anderson	-	Non-Public Arbitrator


**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Sheryl Ann Seipp  
Chair, Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Julie Eileen Gay  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
William W. Anderson  
Non-Public Arbitrator

4-4-06  
\_\_\_\_\_  
Signature Date

4/5/06  
\_\_\_\_\_  
Date of Service