

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

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In the Matter of the Arbitration Between:

Sheldon Keitel (Claimant) vs. Merrill Lynch Pierce Fenner & Smith, Inc. (Respondent)

Case Number: 04-08630

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Sheldon Keitel hereinafter referred to as "Claimant" appeared *pro se*. Previously represented by Milton H. Fried, Jr. Esq., Woska & Hayes, LLP, Kingwood, TX.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. hereinafter referred to as "Respondent": Benjamin J. Biard, Esq., General Counsel, Merrill Lynch, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 17, 2004.

Claimant signed the Uniform Submission Agreement: August 31, 2004.

Statement of Answer, Motion to Dismiss, and Motion for More Definite Statement of Answer filed by Respondent on or about: March 1, 2005.

Respondent signed the Uniform Submission Agreement: March 2, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: control person liability, breach of fiduciary, breach of contract, violation of know your customer rule, unsuitability, failure to diversify, failure to supervise, violations of the securities laws, and failure to hedge. The causes of action relate to various unspecified securities.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$45,000.00 relating to all direct losses in the account, lost earnings; pre-judgment and post-judgment interest; costs; forum fees; hearing session fees; reasonable attorneys' fees; punitive damages, and all other and further relief to which Claimant may be entitled.

Respondent requested that the Statement of Claim be dismissed with prejudice in its entirety; an award of reasonable attorneys' fees; costs, and such other and further relief as the Panel deems just and proper.

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

On or about January 3, 2006, Respondent filed a Motion to Dismiss Claimant's claims with prejudice for failure to provide discovery pursuant to the Arbitrator's November 29, 2005 Order. Claimant did not submit a response to the Motion. After due deliberation the Arbitrator granted 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.

### **AWARD**

After considering the pleadings, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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 = \$ 175.00

#### **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, Merrill Lynch Pierce Fenner & Smith, Inc. is a party.

Member surcharge = \$ 875.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 4-6, 2006 adjournment by Claimant = \$ 450.00

#### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less.

Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: May 10, 2005 1 session

November 28, 2005 1 session

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Total Forum Fees = \$ 900.00

1. The Arbitrator has assessed \$900.00 of the forum fees to Claimant.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 175.00

Adjournment Fee = \$ 450.00

Forum Fees = \$ 900.00

Total Fees = \$ 1,525.00

Less payments = \$ 625.00

Balance Due NASD Dispute Resolution = \$ 900.00

2. Respondent is solely liable for:

Member Fees = \$ 2,625.00

Total Fees = \$ 2,625.00

Less payments = \$ 4,125.00

Refund Due Respondent = \$ 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**

Jeffrey P. Petrucelly, Esq.

Public Arbitrator, Presiding Chairperson

**Concurring Arbitrators' Signature**

  
Jeffrey P. Petrucelly, Esq.  
Public Arbitrator, Presiding Chairperson

2/21/06  
Signature Date

February 22, 2006  
Date of Service (For NASD Dispute Resolution use only)