

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jon Steiner, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Adrian Cooper, Respondents

Case Number: 05-01715

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant Jon Steiner:

Greg A. Metzger, Esq.
Metzger & Austin, P.L.L.C.
Edmond, Oklahoma

For Respondent

Merrill Lynch, Pierce, Fenner & Smith,
Incorporated:

Tara A. LaClair, Esq.
Day, Edwards, Propester & Christensen
Oklahoma City, Oklahoma

CASE INFORMATION

Statement of Claim filed: March 25, 2005

Claimant's Uniform Submission Agreement signed: March 21, 2005

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated:
May 25, 2005

Motion to Dismiss, or in the alternative, Motion for Summary Judgment filed by Respondent
Merrill Lynch, Pierce, Fenner & Smith, Incorporated: May 25, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission
Agreement signed: May 25, 2005

Claimant's Response to Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's
Motion to Dismiss, or in the alternative, Motion for Summary Judgment: June 24, 2005

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, conversion, fraud, and failure to supervise. Claimant's allegations relate to funds transferred by Claimant to Respondents.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$29,464.06 in compensatory damages, and costs, including attorney's fees.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 20, 2005, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On May 25, 2005, Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated filed a Motion to Dismiss, or in the alternative, Motion for Summary Judgment. Claimant filed a response thereto on June 24, 2005. On August 5, 2005, a telephonic pre-hearing conference was held, attended by Greg A. Metzger, Esq., representing Claimant, Tara A. LaClair, Esq. representing Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated, and the Arbitrator. After due deliberation, the Arbitrator granted the motion with respect to Claimant's causes of action for conversion and fraud, and denied the motion with respect to Claimant's causes of action for breach of contract and breach of fiduciary duty.

On October 24, 2005, Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated filed a second Motion to Dismiss, or in the alternative, Motion for Summary Judgment as to the remaining causes of action left standing in Claimant's Statement of Claim. Claimant filed a response thereto on November 7, 2005. On November 14, 2005, Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated filed a reply to Claimant's response. On November 16, 2005, a telephonic pre-hearing conference was held, attended by Greg A. Metzger, Esq. representing Claimant, Tara A. LaClair, Esq. representing Respondent Merrill Lynch, Pierce,

Fenner & Smith, Incorporated, and the Arbitrator. After due deliberation, the Arbitrator denied the motion.

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, testimony, and evidence presented at the hearing, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims against Respondent Adrian Cooper are dismissed without prejudice.
- 2) Claimant's claims against Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated are denied in their entirety.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted denied.

FEES

Pursuant to the 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:

Initial claim filing fee = \$ 150.00

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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 600.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,350.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

Three (3) Pre-hearing conference sessions with a single arbitrator @\$ 450.00/session = \$1,350.00

Pre-hearing conferences:	August 1, 2005	1 session
	August 5, 2005	1 session
	November 16, 2005	1 session

Three (3) Hearing sessions @ \$450.00/session = \$1,350.00

<u>Hearing:</u>	<u>December 8, 2005</u>	<u>3 sessions</u>	<u>= \$2,700.00</u>
Total Forum Fees			= \$2,700.00

1. The Arbitrator assessed \$1,350.00 of the forum fees to Claimant Jon Steiner.
2. The Arbitrator assessed \$1,350.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Respondents requested 145 photocopies @ \$0.50 each = \$ 72.50

Fee Summary

1. Claimant Jon Steiner is charged with the following fees and costs:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$1,350.00
Total Fees	= \$1,500.00
Less payments	= \$ (600.00)
Balance Due NASD Dispute Resolution	= \$ 900.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated is charged with the following fees and costs:

Member Fees	= \$ 2,350.00
Forum Fees	= \$ 1,350.00
Administrative Costs	= \$ 72.50
Total Fees	= \$ 3,772.50
Less payments	= \$(2,350.00)
Balance Due NASD Dispute Resolution	= \$ 1,422.50

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.


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ARBITRATION PANEL

Rosa Linda Guadarrama

Public Arbitrator

Arbitrator's Signature


Rosa Linda Guadarrama
Public Arbitrator

12/12/05
Signature Date

December 12, 2005
Date of Service