

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Claimant v. Nancy Wheeler as Trustee of the G.E.H. Trust and the G.E.H. Trust, Respondents

Case Number: 05-02244

Hearing Site: Los Angeles, California

Nature of the Dispute: Member v. Customers

REPRESENTATION OF PARTIES

For Claimant:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud LLP
Sacramento, California

For Respondents:

Nancy Wheeler
In Propria Persona
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: April 27, 2005

Claimant's Uniform Submission Agreement signed: April 26, 2005

Statement of Answer filed by Respondents: none filed

Respondents' Uniform Submission Agreement signed: none filed

CASE SUMMARY

Claimant alleged that Respondents signed a General Release in an underlying lawsuit filed in the Los Angeles County Superior Court, and that all claims brought by Respondents have been extinguished pursuant to the General Release. In the underlying lawsuit, Respondents alleged fraud, breach of fiduciary duty, conversion, unfair business practices, and breach of an oral contract involving unspecified securities.

RELIEF REQUESTED

Claimant requested a declaration that all claims of the Respondents have been extinguished pursuant to the General Release executed by Nancy Wheeler, as trustee of the G.E.H. Trust, on January 27, 2005, and, in the alternative, a declaration that all of the Respondents' factual and legal claims are without merit and therefore, the Respondents are not entitled to any remedy.

OTHER ISSUES CONSIDERED AND DECIDED

In the Statement of Claim, Claimant stated the following:

Respondents filed a lawsuit in the Los Angeles County Superior Court against Claimant on August 1, 2002. Claimant subsequently filed a petition to compel arbitration in that case. On December 17, 2002, Judge David Workman granted Claimant's petition and ordered Respondents to pursue their claims in arbitration. On September 21, 2004, Respondents dismissed that case without prejudice and filed a second lawsuit in the Los Angeles County Superior Court against Claimant. Claimant again filed a petition to compel arbitration of the claims asserted by Respondents. On January 27, 2005, a settlement agreement was reached between Claimant and Respondents, and Respondents signed a General Release. Respondents subsequently refused to accept payment of the settlement amount as agreed to in the General Release. On March 28, 2005, Judge Richard L. Fruin, Jr. granted Claimant's petition to compel arbitration of the second lawsuit.

Respondents did not file with NASD Dispute Resolution properly executed submission agreements, but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Respondents did not appear at the telephonic pre-hearings held on September 19, 2005, October 10, 2005, and December 15, 2005. Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondents were properly served with the Statement of Claim and received due notice of the pre-hearings, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Although Respondents did not submit an Answer or Uniform Submission Agreements, the Panel has reviewed all submissions filed by the Claimant and Respondents.

On November 15, 2005, Claimant filed a Motion for Pre-Hearing Adjudication and Issuance of Award. On November 17, 2005 and November 29, 2005, Respondents filed a Response to Claimant's Motion for Pre-Hearing Adjudication and Issuance of Award. On December 6, 2005, Claimant filed a Reply in Support of Motion for Pre-Hearing Adjudication and Issuance of Award. On December 15, 2005, the Panel held a telephonic pre-hearing to hear oral argument on Claimant's motion. Respondents did not appear at the pre-hearing. After due deliberation, the Panel granted Claimant's motion and issued this Award.

The Claimant 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 pre-hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The General Release executed by Nancy Wheeler on January 27, 2005 is a binding and valid agreement.
- 2) Any claims made by Nancy Wheeler and the G.E.H. Trust covered by the terms of the General Release are extinguished upon Claimant sending a check to Nancy Wheeler in the amount of \$20,017.03.
- 3) Pursuant to the General Release, Claimant shall pay Respondents \$20,017.03.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is 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	= \$ 500.00
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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	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

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 Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$ 3,000.00
Pre-hearing conferences:	
September 19, 2005	1 session
October 10, 2005	1 session
December 15, 2005	1 session

Total Forum Fees	= \$ 3,000.00
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1. The Panel assessed \$1,800.00 of the forum fees to Claimant.
2. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$ 1,800.00</u>
Total Fees	= \$ 6,750.00
<u>Less payments</u>	<u>= \$(5,950.00)</u>
Balance Due NASD Dispute Resolution	= \$ 800.00

2. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,200.00
<u>Less payments</u>	<u>= \$(0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

Charles E. Riggs	-	Public Arbitrator, Presiding Chair
Robert A. Lombardi	-	Public Arbitrator
David Maurer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Charles E. Riggs
Chair, Public Arbitrator

12-15-05
Signature Date

Robert A. Lombardi
Public Arbitrator

Signature Date

David Maurer
Non-Public Arbitrator

Signature Date

12/19/05
Date of Service


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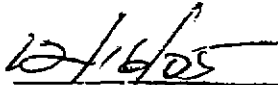
Signature Date

Robert A. Lombardi
Public Arbitrator

Signature Date



David Maurer
Non-Public Arbitrator



Signature Date



Date of Service