

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John S. Valeriano and Anita L. Valeriano, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Stephen W. Davis, Respondents

Case Number: 05-02376

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimants: Randy S. Cohn, Esq.
SimmonsCooper LLC
East Alton, Illinois

For Respondents: Bruce W. Day, Esq.
Tara A. LaClair, Esq.
Day, Edwards, Propester & Christensen, P.C.
Oklahoma City, Oklahoma

CASE INFORMATION

Statement of Claim filed: May 4, 2005

Claimants' Joint Uniform Submission Agreement signed: May 4, 2005

Joint Statement of Answer filed by Respondents: July 14, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: May 26, 2005

Respondent Stephen W. Davis' Uniform Submission Agreement signed: June 6, 2005

CASE SUMMARY

Claimants alleged breach of fiduciary duty, breach of contract, violation of the Securities Exchange Act, violation of the California Corporate Securities Law of 1968, and negligence. Claimants' claims involved various securities including Cisco, Lucent, Oracle, and Ford.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$430,000.00 in compensatory damages, \$1,290,000.00 in punitive damages, pre-Award interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, costs, and expungement of Respondent Stephen W. Davis' CRD record.

OTHER ISSUES CONSIDERED AND DECIDED

In the Joint Statement of Answer filed on July 14, 2005, Respondents included a Motion to Strike Irrelevant Portions of the Statement of Claim. On January 18, 2006, Claimants filed an Objection to and Response to Respondents' Motion to Strike Portions of the Statement of Claim. After due deliberation, the Panel issued an Order on February 7, 2006 denying Respondents' Motion to Strike Irrelevant Portions of the Statement of Claim.

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, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The Panel is of the opinion that both Respondents' record keeping had been inadequate; therefore, the Panel assesses 2/3 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated. The remaining 1/3 of the forum fees is assessed jointly and severally to Claimants.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Stephen W. Davis' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Stephen W. Davis must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Arbitration Panel has made the following affirmative findings of fact:

- a. The claim, allegation, or information is factually impossible or clearly erroneous; and
 - b. The claim, allegation, or information is false.
- 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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

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 Chair/Panel. The following fees are assessed:

2 Pre-hearing conference sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences:	
January 18, 2006	1 session
February 16, 2006	1 session
1 Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference:	
September 9, 2005	1 session
6 Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings:	
March 20, 2006	2 sessions
March 21, 2006	2 sessions
March 22, 2006	2 sessions

Total Forum Fees	= \$ 9,300.00
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1. The Panel assessed \$3,100.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$6,200.00 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.

Claimants requested 20 photocopies at \$0.50 each:	= \$	10.00
Respondents requested 50 photocopies at \$0.50 each:	= \$	25.00
Respondents requested 8 copies of audio transcripts at \$15.00 each:	= \$	120.00

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$	500.00
Forum Fees	= \$	3,100.00
<u>Administrative Costs</u>	= \$	10.00
Total Fees	= \$	3,610.00
<u>Less payments</u>	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$	1,910.00

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

Member Fees	= \$	8,550.00
Forum Fees	= \$	6,200.00
<u>Administrative Costs</u>	= \$	145.00
Total Fees	= \$	14,895.00
<u>Less payments</u>	= \$(8,670.00)
Balance Due NASD Dispute Resolution	= \$	6,225.00

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
Linda J. Berberian	-	Public Arbitrator
Kenneth I. Rosenblum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Charles E. Riggs
Chair, Public Arbitrator

4-4-2006
Signature Date

Linda J. Berberian
Public Arbitrator

Signature Date

Kenneth I. Rosenblum
Non-Public Arbitrator

Signature Date

04/05/06
Date of Service

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Chair, Public Arbitrator

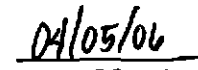
Signature Date


Linda J. Berberian
Public Arbitrator


Signature Date

Kenneth I. Rosenblum
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