

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Richard Povill (Claimant) vs. Merrill Lynch Pierce Fenner & Smith, Inc. (Respondent)

Case Number: 05-02391

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant Richard Povill hereinafter referred to as "Claimant": Curtis E. Pew, Esq., Benjamin N. Cardozo School of Law, New York, New York.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc., hereinafter referred to as "Respondent": David G. Smitham, Esq., Bressler, Amery & Ross, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 5, 2005.

Claimant signed the Uniform Submission Agreement: April 28, 2005.

Statement of Answer filed by the Respondent on or about: August 10, 2005.

Respondent signed the Uniform Submission Agreement: April 22, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; negligence; failure to supervise; misrepresentations, and omission of facts. The cause of action relates to investment in shares of Tyco common stock.

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 \$11,391.50, interest and costs.

Respondents requested that Claimant's claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

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, the testimony and evidence presented at the hearing, 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 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 = \$ 125.00

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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. is a party.

Member surcharge = \$ 425.00

Forum Fees and Assessments

The Panel 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00 per session
= \$ 450.00

Pre-hearing conference: October 17, 2005 1 session

One (1) Hearing session with the Arbitrator @ \$450.00 per session = \$ 450.00

Hearing Date: May 1, 2006 1 session

Total Forum Fees = \$ 900.00

1. The Panel has assessed \$450.00 of the forum fees against the Claimant.
2. The Panel has assessed \$450.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$	125.00
Forum Fees	= \$	450.00
Total Fees	= \$	575.00
Less payments	= \$	575.00
Balance Due NASD Dispute Resolution	= \$	0.00

2. Respondent is solely liable for:

Member Fees	= \$	425.00
Forum Fees	= \$	450.00
Total Fees	= \$	875.00
Less payments	= \$	425.00
Balance Due NASD Dispute Resolution	= \$	450.00

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

ARBITRATION PANEL

Harvey Casher

- Sole Public Arbitrator, Presiding Chairperson

Concurring Arbitrator's Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Harvey Casher
Sole Public Arbitrator, Presiding Chairperson

6/5/06
Signature Date

June 6, 2006

Date of Service (For NASD Dispute Resolution use only)