

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kevin B. Murphy (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.
(Respondent)

Case Number: 05-02481

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

Claimant Kevin B. Murphy ("Murphy") hereinafter referred to as "Claimant": Jacob H. Zamansky, Esq., Zamansky & Associates, LLC, New York, NY.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Respondent": Michael Fortunato, Esq., Rubin, Fortunato & Harbison, P.C., Paoli, PA.

CASE INFORMATION

Statement of Claim filed on or about: May 10, 2005.

Claimant signed the Uniform Submission Agreement: May 6, 2005.

Statement of Answer filed by Respondent on or about: June 30, 2005.

Respondent signed the Uniform Submission Agreement: June 28, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of implied contract, misappropriation, unfair competition and unjust enrichment, and defamation.

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 not less than \$10,000,000.00, pre- and post award interest, costs, expenses, expert's fees, forum fees of this arbitration, reasonable attorney's fees and punitive damages.

Respondent requested the dismissal of the Statement of Claim in its entirety, that all costs be assessed against Claimant and that the arbitration panel award to Merrill

Lynch all other relief that the arbitration panel deems reasonable and appropriate under the circumstances of this case.

OTHER ISSUES CONSIDERED AND DECIDED

The July 2006 hearings were held in Newark, New Jersey. The August 2006 hearings were held in Jersey City, New Jersey. The parties and arbitrators agreed to hold the remaining hearing sessions in New York, New York.

At the hearing, Claimant requested expungement of his form U-5.

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

1. Claimant's claims, including his request for expungement, are denied 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	= \$ 600.00
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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 event s giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 27-28, 2006 adjournment by Claimant	= Waived
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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) Decision on discovery-related motion on the papers
with (1) one arbitrator @ \$200.00 = \$ 200.00

Claimant submitted one discovery-related motion

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: September 30, 2005 1 session
May 22, 2006 1 session

Twelve (12) Hearing sessions @ \$1,200.00 per session = \$14,400.00

Hearing Dates: July 24, 2006 2 sessions
July 25, 2006 2 sessions
July 26, 2006 2 sessions
August 23, 2006 2 sessions
August 24, 2006 2 sessions
November 21, 2006 2 sessions

Total Forum Fees = \$17,000.00

1. The Panel has assessed \$8,400.00 of the forum fees to Claimant.
2. The Panel has assessed \$8,600.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant requested a projection screen and easel = \$535.00

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 8,400.00
<u>Administrative Costs</u>	<u>= \$ 535.00</u>
Total Fees	= \$ 9,535.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,735.00

2. Respondent is solely liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 8,600.00
Total Fees	= \$18,200.00

<u>Less payments</u>	<u>= \$10,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,400.00

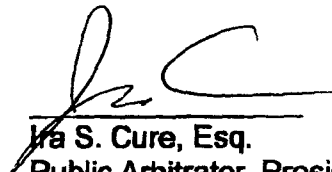
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Ira S. Cure, Esq.	-	Public Arbitrator, Presiding Chairperson
William E. Smith	-	Public Arbitrator
John J. Bucko	-	Non-Public Arbitrator

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.

Concurring Arbitrators' Signatures



Ira S. Cure, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

William E. Smith
Public Arbitrator

Signature Date

John J. Bucko
Non-Public Arbitrator

Signature Date

January 10, 2007

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Ira S. Cure, Esq.	-	Public Arbitrator, Presiding Chairperson
William E. Smith	-	Public Arbitrator
John J. Bucko	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 1507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Ira S. Cure, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



William E. Smith
Public Arbitrator

01-07-07

Signature Date

John J. Bucko
Non-Public Arbitrator

Signature Date

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Signature Date

William E. Smith
Public Arbitrator

Signature Date



John J. Bucko
Non-Public Arbitrator

1/10/2007
Signature Date

January 10, 2007

Date of Service (For NASD Dispute Resolution use only)