

Award NASD Dispute Resolution

In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Claimant v. Jerry L. Nichols and
UBS Financial Services, Inc., Respondents

Jerry L. Nichols, Counter-Claimant v. Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Counter-Respondent

Case Number: 05-02916

Hearing Site: Phoenix, Arizona

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

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated:

David McComb, Esq.
Rubin, Fortunato, Harbison &
Dougherty
Paoli, Pennsylvania

For Respondent UBS Financial Services Inc.:

Michael F. Braun, Esq.
Schuyler, Roche & Swerner, P.C.
Chicago, Illinois

For Respondent/Counter-Claimant
Jerry L. Nichols:

Robert D. Mitchell, Esq.
Mitchell Law Offices
Phoenix, Arizona

CASE INFORMATION

Statement of Claim filed: June 6, 2005

Claimant's Uniform Submission Agreement signed: January 6, 2006

Statement of Answer filed by Respondent UBS Financial Services Inc.:
August 10, 2005

Respondent UBS Financial Services Inc.'s Uniform Submission Agreement signed:
January 5, 2006

Statement of Answer and Counterclaim filed by Respondent Jerry Nichols:
July 26, 2005

Respondent Jerry L. Nichols' Uniform Submission Agreement signed: August 17, 2005

Statement of Answer to Counterclaim filed by Claimant/Counter-Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: August 2, 2005

CASE SUMMARY

As against Respondent Jerry L. Nichols, Claimant alleged violation of contractual obligations to Claimant and breach of fiduciary duty. As against Respondent UBS Financial Services Inc., Claimant alleged wrongful interference with Respondent Nichols' contractual obligations to Claimant, and inducement of Respondent Nichols' breach of fiduciary duty to Claimant. As against both Respondents, Claimant alleged interference with prospective and actual business relations, unfair competition and unjust enrichment, misappropriation and conversion of Claimant's trade secrets and business property.

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

In his counterclaim, Respondent, Jerry L. Nichols, alleged defamation, wrongful interference with potential and existing business relations, unfair competition, false light and injurious falsehood.

Claimant/Counter-respondent denied the allegations of wrongdoing set forth in Respondent Nichols' counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested a permanent injunctive relief, unspecified compensatory damages, and any other relief that the Panel deems appropriate.

Respondents requested dismissal of the Statement of Claim in its entirety.

In his Counterclaim, Respondent/Counter-Claimant Jerry L. Nichols, requested compensatory damages in the sum of \$7,500,000.00, punitive damages, preliminary and permanent injunction and costs, including attorney's fees.

Claimant/Counter-Respondent requested dismissal of the Counterclaim in its 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) Claimant/Counter-Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable and shall pay to Respondent/Counter-Claimant Jerry L. Nichols compensatory damages in the sum of \$400,000.00.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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
Respondent's Counterclaim	= \$ 600.00

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	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,500.00
Total Member Fees	= \$7,750.00

The member firm UBS Financial Services, Inc. a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,500.00
Total Member Fees	= \$7,750.00

Forum Fees and Assessments

The Panel 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 last four (4) hours or less. Fees associated with these proceedings are:

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

Pre-hearing conference: March 21, 2006 1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00

Pre-hearing conference: January 12, 2006 1 session

(14) Hearing sessions @ \$1,200.00/session = \$16,800.00

Hearings:

October 9, 2006	2 sessions
October 10, 2006	2 sessions
October 11, 2006	2 sessions
October 12, 2006	2 sessions
October 16, 2006	2 sessions
October 17, 2006	2 sessions
October 18, 2006	2 sessions

Total Forum Fees = \$18,450.00

1. The Panel assessed \$9,225.00 of the forum fees to Claimant/Counter-Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.
2. The Panel assessed \$9,225.00 of the forum fees to Respondent/Counter-Claimant Jerry L. Nichols.

Fee Summary

1. Claimant/Counter-Respondent is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Injunctive Fees	= \$ 2,500.00
Member Fees	= \$ 7,750.00
Forum Fees	= \$ 9,225.00
Total Fees	= \$19,975.00
Less payments	=(\$11,750.00)
Balance Due NASD Dispute Resolution	= \$ 8,225.00

2. Respondent/Counter-Claimant Jerry L. Nichols is charged with the following fees and costs:

Counterclaim Filing Fees	= \$ 600.00
Forum Fees	= \$ 9,225.00
Balance Due NASD Dispute Resolution	= \$ 9,825.00

3. Respondent UBS Financial Services, Inc., is charged with the following fees and costs:

Member Fees	= \$ 7,750.00
Less Payment	= \$(7,750.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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.

NASD Dispute Resolution
Arbitration No. 05-02916
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ARBITRATION PANEL

Thomas F. Tobin, Esq.	-	Public Arbitrator, Presiding Chair
Richard M. Weinroth, Esq.	-	Public Arbitrator
Peter Joseph Kalman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas F. Tobin, Esq.
Chair, Public Arbitrator

Signature Date



Richard M. Weinroth, Esq.
Public Arbitrator

October 31, 2006

Signature Date

Peter Joseph Kalman
Non-Public Arbitrator

Signature Date

10/31/06

Date of Service

ARBITRATION PANEL

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Richard M. Weinroth, Esq.	-	Public Arbitrator
Peter Joseph Kalman	-	Non-Public Arbitrator

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Chair, Public Arbitrator

Signature Date

Richard M. Weinroth, Esq.
Public Arbitrator

Signature Date



Peter Joseph Kalman
Non-Public Arbitrator

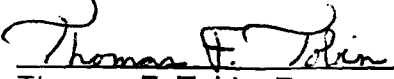
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Signature Date

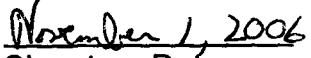
10/31/06
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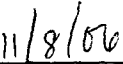

Signature Date

Richard M. Weinroth, Esq.
Public Arbitrator

Signature Date

Peter Joseph Kalman
Non-Public Arbitrator

Signature Date


Date of Service