

**Amended Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

La Verne P. Hawthorne, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated
and William L. Kopenhaver, Respondents

Case Number: 05-03125

Hearing Site: Seattle, Washington

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

REPRESENTATION OF PARTIES

For Claimant La Verne P. Hawthorne:

Carl J. Carlson, Esq.
Carlson & Dennett, P.S.
Seattle, Washington

For Respondents Merrill Lynch, Pierce, Fenner & Smith
Incorporated and William L. Kopenhaver:

James P. Delphey, Esq.
Seltzer Caplan McMahon
Vitek
San Diego, California

CASE INFORMATION

Statement of Claim filed: June 14, 2005

Claimant La Verne P. Hawthorne's Uniform Submission Agreement signed: May 1,
2005

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith
Incorporated and William L. Kopenhaver: August 15, 2005

Joint Uniform Submission Agreement signed by Respondent Merrill Lynch, Pierce,
Fenner & Smith Incorporated on July 18, 2006 and signed by Respondent William L.
Kopenhaver on July 28, 2006

CASE SUMMARY

Claimant asserted the following causes of action: negligence, unsuitability, breach of fiduciary duty, misrepresentations, omissions, failure to supervise, breach of contract, violation of Washington Consumer Protection Act, and violation of Washington State Securities Act. Claimant's allegations involved the improper use of margin and overconcentration in technology mutual funds and stocks such as Alliance Technology Fund, Munder Net Net Fund, Munder Future Tech Fund, Microsoft, and AT&T.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested at least \$350,000.00 in compensatory damages, return of margin interest of at least \$21,000.00, return of mortgage interest, pre-judgment interest, \$10,000.00 in treble damages, unspecified punitive damages, compensation for tax impact of Award, and costs, including attorney's fees.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this matter from Respondent William L. Kopenhaver's CRD records, and costs, including attorney's fees and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

On May 26, 2006, Respondents filed a Motion to Dismiss Claims Asserted by La Verne P. Hawthorne Based on Application of Statutes of Limitations and Notice of Lodgment in Support of Their Motion to Dismiss Claims Asserted by La Verne P. Hawthorne Based on Application of Statutes of Limitations. On June 8, 2006, Claimant filed a Reply to Respondents' Motion to Dismiss. On June 9, 2006, Respondents submitted additional legal authorities to the Panel for its consideration. On June 12, 2006, the Panel and the parties participated in a pre-hearing conference during which the Panel heard oral argument regarding the Motion to Dismiss. On June 21, 2006, the Panel issued an Order denying the motion with leave to renew it during the evidentiary hearing.

On June 30, 2006, at the close of Claimant's case in chief, Respondents renewed their Motion to Dismiss. The Panel granted the motion and was advised that Claimant would be filing a Motion for Reconsideration. On July 3, 2006, Claimant filed a Motion for Reconsideration of Dismissal of Claims. On August 18, 2006, Claimant filed a Memorandum in Support of Motion for Reconsideration of Dismissal of Claims. On August 25, 2006, Respondents filed an Opposition to Claimant's Motion for Reconsideration. On September 11, 2006, the parties and the Panel participated in a post-hearing conference during which the Panel heard oral argument from the parties regarding Claimant's Motion for Reconsideration. After due deliberation, the Panel denied Claimant's motion and reaffirmed its decision granting Respondents' Motion to Dismiss.

On June 30, 2006, Respondent William L. Kopenhaver withdrew his request for expungement because he is retired from the securities industry. Accordingly, the Panel did not rule on this request.

The Award in this matter was served on the parties on September 27, 2006. Claimant filed a Request for Clarification of the Award that same day. On September 28, 2006, Respondents filed a response to Claimant's request. On September 28, 2006, Claimant filed a reply to Respondents' response. On October 5, 2006, the Panel deliberated regarding the parties' submissions and ruled that the inclusion of the words "without prejudice" in the Award was a ministerial error. The Award should have stated that the matter was dismissed "with prejudice." Accordingly, the Award is hereby amended to state that Claimant's claims are dismissed with prejudice.

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 as well as Respondents' Motion to Dismiss, Claimant's Motion for Reconsideration, the parties' briefing and oral arguments regarding these two motions, and Claimant's Request for Clarification and the briefing thereon, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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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	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) decision on a discovery-related motion on the papers
with (1) one arbitrator @ \$200.00 = \$ 200.00
Claimant submitted (1) one discovery-related motion

Three (3) pre-hearing conference sessions with the Panel
@ \$1,125.00/session = \$3,375.00
Pre-hearing conferences: October 21, 2005 1 session
June 12, 2006 1 session
September 11, 2006 1 session

Eight (8) hearing sessions @ \$1,125.00/session = \$9,000.00
Hearings: June 27, 2006 2 sessions
June 28, 2006 2 sessions
June 29, 2006 2 sessions
June 30, 2006 2 sessions

Total Forum Fees	= \$12,575.00
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1. The Panel assessed \$6,287.50 of the forum fees to Claimant.
2. The Panel assessed \$6,287.50 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant La Verne P. Hawthorne is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,287.50
Total Fees	= \$ 6,587.50
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$5,162.50

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

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and William L. Kopenhaver are charged jointly and severally with the following fees and costs:

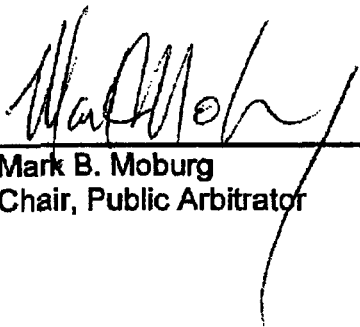
Forum Fees	= \$ 6,287.50
Balance Due NASD Dispute Resolution	= \$ 6,287.50

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

Mark B. Moburg	-	Public Arbitrator, Presiding Chair
Hunington G. Sachs	-	Public Arbitrator
Porter R. Taylor	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Mark B. Moburg
Chair, Public Arbitrator

Signature Date

Hunington G. Sachs
Public Arbitrator

Signature Date

Porter R. Taylor
Non-Public Arbitrator

Signature Date

October 16, 2006
Date of Service

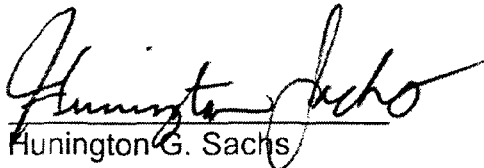
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Chair, Public Arbitrator

Signature Date



Hunington G. Sachs
Public Arbitrator

10/5/06

Signature Date

Porter R. Taylor
Non-Public Arbitrator

Signature Date

October 16, 2006

Date of Service

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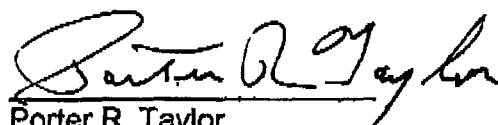
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10/5/06

Signature Date

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