

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ellen Zone, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent

Case Number: 05-03460

Hearing Site: San Diego, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Charles C. Hunter, Esq.
Woska and Hunter, LLP
Kingwood, Texas

For Respondent:

Alan S. Rafterman, Esq.
Merrill Lynch
New York, New York

CASE INFORMATION

Statement of Claim filed: July 1, 2005

Claimant's Uniform Submission Agreement signed: October 19, 2004

Statement of Answer filed by Respondent: August 30, 2005

Respondent's Uniform Submission Agreement signed: August 26, 2005

CASE SUMMARY

Claimant alleged violations of section 10(B) of the Exchange Act and Rule 10(B)(5), control person liability, breach of fiduciary duty, breach of contract, violation of the "know your customer" rule, unsuitability, failure to diversify, over-concentration, failure to supervise, violation of securities laws, and failure to hedge. Claimant's claims involved unspecified securities.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested in excess of \$130,000.00 in compensatory damages, including direct losses, charges to the accounts, lost earnings, pre- and post-judgment interest, punitive damages, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing, Respondent provided the Panel with a report showing that Respondent owed Claimant a refund of fees due to an inadvertent clerical error. At the conclusion of the evidentiary hearing, Respondent informed the Panel that it would not agree that it received a full and fair hearing if the Panel considered the report. The Panel did not include or consider the report in its deliberations, but accepts Respondent's representation that such fees will be refunded.

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) Respondent is liable to and shall pay Claimant the sum of \$51,514.31 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant interest at the rate of 10% per annum on \$51,514.31 from December 31, 2003 to May 31, 2006.
- 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 | = \$ 300.00 |
|--------------------------|-------------|

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 | = \$ 1,700.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| <u>Hearing Process Fee</u> | = \$ 2,750.00 |
| Total Member Fees | = \$ 5,200.00 |

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts 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 conferences: March 13, 2006 1 session | |
| 1 Pre-hearing conference session with the Panel @ \$1,125.00/session | = \$ 1,125.00 |
| Pre-hearing conferences: November 7, 2005 1 session | |
| 6 Hearing sessions @ \$1,125.00/session | = \$ 6,750.00 |
| Hearings: May 3, 2006 2 sessions | |
| May 4, 2006 2 sessions | |
| May 5, 2006 2 sessions | |

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|-------------------------|----------------------|
| Total Forum Fees | = \$ 8,325.00 |
|-------------------------|----------------------|

1. The Panel assessed \$4,387.50 of the forum fees to Claimant.
2. The Panel assessed \$3,937.50 of the forum fees to Respondent.

ARBITRATION PANEL

| | | |
|-------------------|---|------------------------------------|
| Peter D. Brennan | - | Public Arbitrator, Presiding Chair |
| Nancy J. Spieczny | - | Public Arbitrator |
| Richard M. Leigh | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Peter D. Brennan
Chair, Public Arbitrator

Signature Date

Nancy J. Spieczny
Public Arbitrator

Signature Date

Richard M. Leigh
Non-Public Arbitrator

Signature Date

Date of Service

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Concurring Arbitrators' Signatures



Peter D. Brennan
Chair, Public Arbitrator

5/2/06

Signature Date

Nancy J. Spieczny
Public Arbitrator

Signature Date

Richard M. Leigh
Non-Public Arbitrator

Signature Date

5/10/06

Date of Service