

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mitchell Slater (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Thomas Fickinger (Respondents)

Case Number: 05-04072

Hearing Site: Newark, New Jersey

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

REPRESENTATION OF PARTIES

Claimant Mitchell Slater hereinafter referred to as "Claimant": Brian J. Neville, Esq., Law Offices of Brian J. Neville, LLC, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Thomas Fickinger ("Fickinger") hereinafter collectively referred to as "Respondents": Michael J. Fortunato, Esq., and Karen L. Palermo, Esq., Rubin, Fortunato, Harbison & Dougherty, P.C., Paoli, PA.

CASE INFORMATION

Statement of Claim filed on or about: August 3, 2005.

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

Joint Statement of Answer filed by Respondents on or about: September 28, 2005.

Merrill Lynch signed the Uniform Submission Agreement: August 18, 2005.

Fickinger signed the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: abuse of Form U5, defamation, slander, libel, tortuous interference with business relationships, breach of contract, and breach of industry standards of commercial honor and principals of trade.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages for decrease in earnings, that the Panel order expungement of Claimant's Form U5, that the Panel order Merrill Lynch to file an amended Form U5 Termination Notice, interest, costs, disbursements, filing fees, attorneys' fees, and such other and further relief as the Panel deems just and equitable.

Respondents requested that the Statement of Claim be denied in its entirety and for all other relief as the Panel deems reasonable and appropriate under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

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 Form U5 should be amended to delete all references to the allegations by Mr. Salvatore Gengaro as the Panel has determined that there was no consumer initiated complaint and no reporting of the allegations is appropriate. The expungement order is based on the defamatory nature of the information in the CRD system.
2. Claimant's Form U5 should be amended to delete all reference to an internal review concerning possible taking of discretion and possible mismarking of order tickets as unsolicited as the Panel concluded that said internal review was initiated for competitive purposes. The expungement order is based on the defamatory nature of the information in the CRD system.
3. 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	= \$	250.00
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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 events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$	1,500.00
Pre-hearing Process Fee	= \$	750.00
Hearing Process Fee	= \$	2,200.00

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 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 session with Panel @ \$1,000.00 = \$ 1,000.00
Pre-hearing conference: November 30, 2005 1 session

Twelve (12) Hearing sessions with Panel @ \$1,000.00 = \$ 12,000.00
Hearing Dates: October 3, 2006 2 sessions
October 4, 2006 2 sessions
October 16, 2006 2 sessions
October 17, 2006 2 sessions
October 18, 2006 2 sessions
October 19, 2006 2 sessions

Total Forum Fees = \$ 13,000.00

1. The Panel has assessed \$13,000.00 of the forum fees to Respondent Merrill Lynch.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less Payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,175.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	= \$ 13,000.00
<u>Total Fees</u>	= \$ 17,450.00
<u>Less Payments</u>	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 13,000.00

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


NASD REGULATION

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ARBITRATION PANEL

Linda T. Pellegrino, Esq.	-	Public Arbitrator, Presiding Chairperson
Jacob Aschkenasy, Esq.	-	Public Arbitrator
Joan Marie Chiusano	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Linda T. Pellegrino, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jacob Aschkenasy, Esq.
Public Arbitrator

Signature Date

Joan Marie Chiusano
Non-Public Arbitrator

Signature Date

December 1, 2006

Date of Service (For NASD Dispute Resolution use only)


ARBITRATION PANEL

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Jacob Aschkenasy, Esq.	-	Public Arbitrator
Joan Marie Chiusano	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Linda T. Pellegrino, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Jacob Aschkenasy, Esq.
Public Arbitrator



11.30.06
Signature Date

Joan Marie Chiusano
Non-Public Arbitrator

Signature Date

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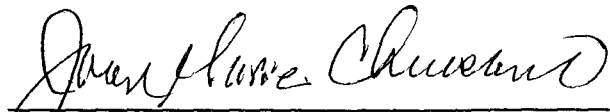
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