

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Edward Rosenberg (Claimant) vs. Merrill Lynch Pierce Fenner & Smith, Inc. and Justin Cho (Respondents)

Case Number: 05-04774

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Edward Rosenberg hereinafter referred to as "Claimant": George M. Gavalas, Esq., Law Office of George M. Gavalas, Mineola, NY.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Justin Cho ("Cho") hereinafter collectively referred to as "Respondents": Alan S. Rafterman, Merrill Lynch Pierce Fenner and Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 12, 2005.

Claimant signed the Uniform Submission Agreement: August 26, 2005.

Statement of Answer filed by Respondents on or about: December 20, 2005.

Merrill Lynch signed the Uniform Submission Agreement: October 14, 2005.

Cho signed the Uniform Submission Agreement: December 20, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of third party beneficiary contract, violation of NASD Rules, breach of implied covenants of good faith and fair dealings, fraud, deceit, gross negligence, and breach of fiduciary duty. The causes of action relate to Merrill Lynch trusts.

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 compensatory damages in the amount of \$32,000.00 plus interest, punitive damages plus interest, reasonable attorneys' fees, expenses, costs, disbursements, and such other and further relief as is just and proper.

Respondents requested dismissal of the Statement of Claim in its entirety with prejudice,

expungement of this matter from Respondent Cho's CRD records, costs, expenses, reasonable attorneys' fees, and such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

A telephonic initial pre-hearing conference was held on February 10, 2006 during which Claimant's counsel did not participate. A second telephonic initial pre-hearing conference was rescheduled and held on February 16, 2006 during which Claimant's counsel did not participate. As a result of Claimant's counsel's absence, the Arbitrator ruled to dismiss Claimant's claims without prejudice.

AWARD

After considering the pleadings, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety without prejudice.
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	= \$	175.00
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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	= \$	875.00
Pre-hearing Process Fee	= \$	750.00

Forum Fees and Assessments

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

Two (2) Pre-hearing session with a single arbitrator @ \$450.00	= \$	900.00
Pre-hearing conferences: February 10, 2006 1 session		
February 16, 2006 1 session		
Total Forum Fees	= \$	900.00

1. The Arbitrator has assessed \$900.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$	175.00
Forum Fees	= \$	900.00
Total Fees	= \$	1,075.00
Less payments	= \$	775.00
Balance Due NASD Dispute Resolution	= \$	300.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$	1,625.00
Total Fees	= \$	1,625.00
Less payments	= \$	1,625.00
Balance Due NASD Dispute Resolution	= \$	0.00

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

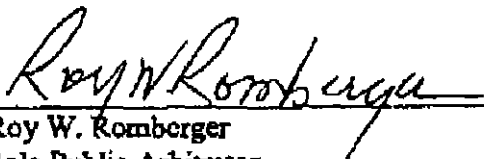
ARBITRATOR

Roy W. Romberger

Sole Public Arbitrator

Arbitrator's Signature

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.



Roy W. Romberger
Sole Public Arbitrator

02/22/06
Signature Date

February 22, 2006

Date of Service (For NASD Dispute Resolution use only)