

**Award
NASD Dispute Resolution**

COPY

In the Matter of the Arbitration Between:

Barbara J. Owens, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated and
Caesar A. Cepeda, Respondents

Case Number: 05-05020

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Peter L. Steinman, Esq.
Gaims, Weil, West &
Epstein, LLP
Los Angeles, California

For Respondents:

Lauryn J. Hart, Esq.
Merrill Lynch, Pierce,
Fenner & Smith,
Incorporated
New York, New York

CASE INFORMATION

Statement of Claim filed: September 23, 2005

Claimant's Uniform Submission Agreement signed: September 15, 2005

Joint Statement of Answer filed by Respondents: November 17, 2005

Joint Amended Statement of Answer filed by Respondents: December 28, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission
Agreement signed: December 12, 2005

Respondent Caesar A. Cepeda's Uniform Submission Agreement signed: December
14, 2005

CASE SUMMARY

Claimant asserted that Respondents breached their duties to Claimant by failing to advise her of the tax consequences of making withdrawals from her IRA accounts.

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

RELIEF REQUESTED

Claimant requested recovery of her tax liability in the amount of \$36,276.00, pre-judgment interest at the rate of 10%, and costs.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety and an order from the arbitration panel recommending that all references to this proceeding be expunged from Respondent Caesar A. Cepeda's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

On December 28, 2005, Respondents filed an Amended Answer pursuant to NASD Code of Arbitration Procedure Rule 10328.

On December 28, 2005, Respondents filed a Motion to Dismiss. On March 8, 2006, Claimant filed an Opposition to Respondents' Motion to Dismiss. On March 30, 2006, Respondents filed a Reply in Further Support of Motion to Dismiss. On May 11, 2006, the parties and the Panel participated in a pre-hearing conference during which the Panel heard oral argument regarding Respondents' motion. On May 22, 2006, the Panel issued an Order denying Respondents' motion without prejudice to renewal of the motion at any time during this arbitration proceeding.

On November 20, 2006, NASD was notified in writing by Claimant's counsel that this matter had been settled, subject to the parties' agreement on the terms of a written settlement agreement. The same day, NASD was notified by Respondents' counsel that Respondents intended to proceed with the previously scheduled hearing on November 30, 2006 in order to petition the Panel for an Order of expungement. Claimant's counsel advised that Claimant believes her claim to be valid and thus would not agree to Respondents' request for expungement. Claimant's counsel also stated that Claimant would not appear at the hearing. All of the foregoing communications were sent to NASD staff via e-mail.

Upon review of NASD's hearing notification letter, dated November 3, 2006, and an e-mail from Claimant's counsel, dated November 20, 2006, the undersigned Panel determined that Claimant received due notice of the hearing, and that arbitration of the matter would proceed without Claimant in accordance with NASD's Code of Arbitration Procedure (the "Code").

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) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Caesar A. Cepeda's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Caesar A. Cepeda must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible, clearly erroneous, and false.

- 2) The parties shall bear their respective costs, including attorney's fees.
- 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 175.00
--------------------------	-------------

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	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$1,000.00
Total Member Fees	= \$2,625.00

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:

Two (2) pre-hearing conference sessions with the Panel		
@ \$600.00/session		= \$1,200.00
Pre-hearing conferences:	February 8, 2006	1 session
	May 11, 2006	1 session
One (1) hearing session @ \$600.00/session		= \$ 600.00
Hearing:	November 30, 2006	1 session
Total Forum Fees		= \$ 1,800.00

1. The Panel assessed \$300.00 of the forum fees jointly and severally to Respondents.
2. The Panel assessed \$1,500.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$1,500.00
Total Fees	= \$1,675.00
Less payments	= \$ (675.00)
Balance Due NASD Dispute Resolution	= \$1,000.00

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

Member Fees	= \$ 2,625.00
Less payments	= \$(2,625.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are charged jointly and severally with the following fees and costs:

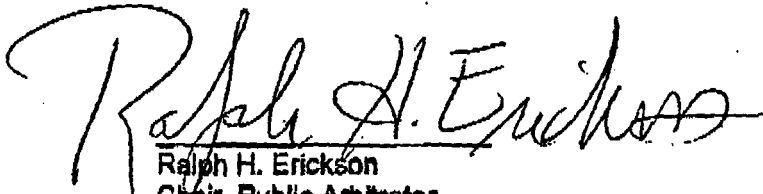
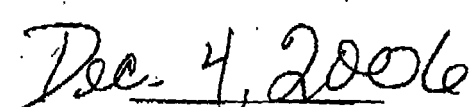
Forum Fees	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 300.00

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.

ARBITRATION PANEL

Ralph H. Erickson	-	Public Arbitrator, Presiding Chair
Roberta Haft	-	Public Arbitrator
Paul H. White	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

	
Ralph H. Erickson Chair, Public Arbitrator	Signature Date

Roberta Haft
Public Arbitrator

Signature Date

Paul H. White
Non-Public Arbitrator

Signature Date

12/4/06
Date of Service

ARBITRATION PANEL

Ralph H. Erickson	-	Public Arbitrator, Presiding Chair
Roberta Haft	-	Public Arbitrator
Paul H. White	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ralph H. Erickson
Chair, Public Arbitrator

Signature Date



Roberta Haft
Public Arbitrator

12-1-06
Signature Date

Paul H. White
Non-Public Arbitrator

Signature Date

12/4/06
Date of Service

ARBITRATION PANEL

Ralph H. Erickson	-	Public Arbitrator, Presiding Chair
Roberta Haft	-	Public Arbitrator
Paul H. White	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ralph H. Erickson
Chair, Public Arbitrator

Signature Date

Roberta Haft
Public Arbitrator

Signature Date



Paul H. White
Non-Public Arbitrator

11/30/06

Signature Date

12/4/06

Date of Service