

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Bob T. Hall and Mariah G. Hall, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Dean L. Welsh, Respondents

Case Number: 06-00294

Hearing Site: San Diego, California

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

REPRESENTATION OF PARTIES

For Claimants:

Jeffrey P. Lendrum, Esq.
Lendrum Law Firm
San Diego, California

For Respondent

Merrill Lynch, Pierce, Fenner & Smith
Incorporated ("Merrill Lynch"):

James P. Delphey, Esq.
Robert M. Traylor, Esq.
Seltzer Caplan McMahan Vitek
San Diego, California

For Respondent

Dean L. Welsh ("Welsh"):

Michael T. McColloch, Esq.
Christine M. Mueller, Esq.
McColloch & Campitiello, LLP
Carlsbad, California

CASE INFORMATION

Statement of Claim filed: January 18, 2006

First Amended Statement of Claim filed: January 30, 2006

Claimants' First Joint Uniform Submission Agreement signed: January 13, 2006

Claimants' Second Joint Uniform Submission Agreement signed: January 30, 2006

Statement of Answer filed by Respondent Merrill Lynch: March 27, 2006

Respondent Merrill Lynch's Uniform Submission Agreement signed: February 10, 2006

CASE SUMMARY

Claimants' Initial Statement of Claim was filed against Respondents Merrill Lynch and Welsh. Later, Claimants decided to pursue Respondent Welsh in court and filed their First Amended Statement of Claim removing Welsh from this arbitration matter.

In their First Amended Statement of Claim, Claimants made claims for breach of fiduciary duty, failure to supervise, respondeat superior, breach of contract, constructive fraud, punitive damages, and attorneys' fees. Claimants allegations involve Mattson Technologies, Inc., and Supertex, Inc. stock and stock options, and trading on margin.

Respondent Merrill Lynch denied the allegations of wrongdoing set forth in Claimants' First Amended Statement of Claim and asserted various affirmative defenses.

On September 14, 2006, NASD received notice that Claimants and Welsh stipulated to add Welsh back into this arbitration as a respondent. Claimants and Welsh agreed to dismiss all related court actions.

RELIEF REQUESTED

Claimants requested not less than \$900,000.00 in compensatory damages, disgorgement, punitive damages, pre-judgment interest, and costs, including attorney's fees.

Respondent Merrill Lynch requested dismissal of Claimants' First Amended Statement of Claim in its entirety, and costs, including attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Welsh did not file with NASD Dispute Resolution a properly executed submission agreement but has agreed to submit to arbitration, pursuant to the above-referenced stipulation entered into with Claimants, and is bound by the determination of the Panel on all issues submitted.

On August 4, 2006, Respondent Merrill Lynch filed a Motion to Dismiss Claimants' First Amended Statement of Claim based on Applicable Statutes of Limitation. On September 1, 2006, Claimants filed an Opposition. On September 8, 2006, Respondent Merrill Lynch filed a Reply. On September 14, 2006, Respondent Welsh joined Respondent Merrill Lynch's above-referenced Motion to Dismiss. On September 20, 2006, the Panel conducted a telephonic conference with the parties on this motion. After due deliberation, the Panel granted Respondents' Motion to Dismiss.

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 and oral argument presented at the telephonic conference on September 20, 2006, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are dismissed due to expiration of applicable statutes of limitation.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure, 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	= \$ 375.00
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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 is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided 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:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00
Pre-hearing conferences: August 4, 2006 1 session
September 20, 2006 1 session

Total Forum Fees	= \$ 2,400.00
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1. The Panel assessed \$2,400.00 of the forum fees jointly and severally to Claimants.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 2,775.00
Less payments	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 1,075.00

2. Respondent Merrill Lynch is charged with the following fees and costs:

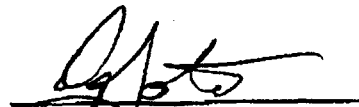
Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Kevin K. Forrester	-	Public Arbitrator, Presiding Chair
William C. Stewart, Jr.	-	Public Arbitrator
Thomas E. Mullen	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Kevin K. Forrester
Chair, Public Arbitrator

9/25/06

Signature Date

William C. Stewart, Jr.
Public Arbitrator

Signature Date

Thomas E. Mullen
Non-Public Arbitrator

Signature Date

September 26, 2006

Date of Service
(NASD Use Only)


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William C. Stewart, Jr.	-	Public Arbitrator
Thomas E. Mullen	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kevin K. Forrester
Chair, Public Arbitrator

Signature Date


William C. Stewart, Jr.
Public Arbitrator

25 Sept. 2006
Signature Date

Thomas E. Mullen
Non-Public Arbitrator

Signature Date

September 26, 2006
Date of Service
(NASD Use Only)

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Signature Date

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Public Arbitrator

Signature Date


Thomas E. Mullen
Non-Public Arbitrator

9/25/06
Signature Date

September 26, 2006
Date of Service
(NASD Use Only)