
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Case Number: 06-01153

Name of the Respondent

Heath M. Barrett

Hearing Site: Orlando, Florida

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

For Merrill Lynch, Pierce, Fenner & Smith Incorporated, hereinafter referred to as "Claimant": Jason T. Edlmann, Esq., Rubin Fortunato P.C., Paoli, Pennsylvania.

Heath M. Barrett, hereinafter referred to as "Respondent", did not appear.

CASE INFORMATION

Statement of Claim filed on or about: March 3, 2006.

Claimant signed the Uniform Submission Agreement: March 2, 2006.

Respondent did not file a Statement of Answer or a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of promissory note; and, 2) unjust enrichment. The causes of action relate to monies due pursuant to the terms of a promissory note.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$77,926.35, interest at the rate of 4.25% per annum through date of payment, attorney's fees, costs, forum fees and such other relief as the Panel deemed just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

A telephonic evidentiary hearing was held on October 11, 2006 and proceeded upon unanimous agreement of the Panel without the attendance of the Respondent subject to the Code, Section 10318 (failure to appear).

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the telephonic evidentiary hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable for breach of promissory note and shall pay to Claimant compensatory damages in the amount of \$78,586.07, of which \$75,285.30 is unpaid loan and \$3,300.77 is unpaid suspense balance, as of January 1, 2006.

Respondent is found liable and shall pay to Claimant interest on the total compensatory damages at the rate of 4.25% per annum from January 1, 2006 until the date of payment of the Award.

Respondent is found liable and shall pay to Claimant attorney's fees, pursuant to the terms of the promissory note and the employment agreement executed by the parties, in the amount of \$11,516.82.

Any and all claims for relief not specifically addressed herein, are 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	= \$ 1,000.00
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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, Claimant is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee	= \$ 1,700.00
Total Member Fees	= \$ 3,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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 the Panel @ \$750.00	= \$ 750.00
Pre-hearing conferences: June 30, 2006 1 session	
One (1) Hearing session with the Panel @ \$750.00	= \$ 750.00
Hearing Date: October 11, 2006 1 session	
Total Forum Fees	= \$ 1,500.00

The Panel has assessed the total forum fees of \$1,500.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$ 3,550.00</u>
Total Fees	= \$ 4,550.00
<u>Less payments</u>	<u>= \$ 4,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

ARBITRATION PANEL

Darryll R. Bauchert, MBA, CFP	-	Non-Public Arbitrator, Presiding Chairperson
Alison Hardage	-	Non-Public Arbitrator
Stephen A. Saker	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Darryll R. Bauchert, MBA, CFP
Non-Public Arbitrator, Presiding Chairperson

10/12/06
Signature Date

/s/
Alison Hardage
Non-Public Arbitrator

10/12/06
Signature Date

/s/
Stephen A. Saker
Non-Public Arbitrator

10/12/06
Signature Date

10/13/06
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No.06-01153
Award Page 4

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$ 3,550.00</u>
Total Fees	= \$ 4,550.00
<u>Less payments</u>	<u>= \$ 4,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
Total Fees	= \$ 1,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,500.00

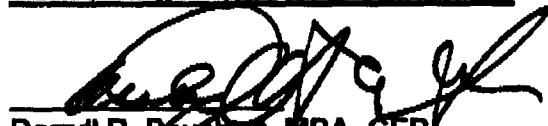
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ARBITRATION PANEL

Darryll R. Bauchert, MBA, CFP
Alison Hardage
Stephen A. Saker

- Non-Public Arbitrator, Presiding Chairperson
- Non-Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Darryll R. Bauchert, MBA, CFP
Non-Public Arbitrator, Presiding Chairperson

10/12/2006
Signature Date

Alison Hardage
Non-Public Arbitrator

Signature Date

Stephen A. Saker
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No.06-01163

Award Page 4Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Total Fees	= \$ 4,550.00
Less payments	= \$ 4,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

ARBITRATION PANEL

Darryll R. Bauchert, MBA, CFP

-

Non-Public Arbitrator, Presiding Chairperson

Alison Hardage

-

Non-Public Arbitrator

Stephen A. Saker

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Darryll R. Bauchert, MBA, CFP

Non-Public Arbitrator, Presiding Chairperson

Signature Date



Alison Hardage

Non-Public Arbitrator

10-12-06

Signature Date

Stephen A. Saker

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Oct. 12. 2006 9:40AM

No. 3253 P. 5/5

NASD Dispute Resolution
Arbitration No.06-01153
Award Page 4

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Total Fees	= \$ 4,550.00
Less payments	= \$ 4,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Forum Fees	= \$ 1,500.00
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Allison Hardage	-	Non-Public Arbitrator
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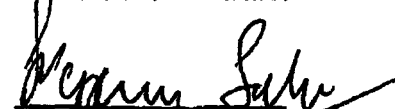
Concurring Arbitrators' Signatures

Darryll R. Bauchert, MBA, CFP
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Allison Hardage
Non-Public Arbitrator

Signature Date


Stephen A. Saker
Non-Public Arbitrator

10/12/2006
Signature Date

Date of Service (For NASD Dispute Resolution office use only)