

## **AWARD**

**NASD, Regulation, Inc.,  
Office of Dispute Resolution**

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In the Matter of the Arbitration Between

Frederick Mengarelli

Claimant

NASD Regulation, Inc.  
No. 96-00449

v.

Merrill Lynch Pierce Fenner & Smith, Inc.  
Roger P. Gugger

Respondents

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### **REPRESENTATION OF PARTIES**

Frederick Mengarelli ("**Claimant**") was represented by Arthur S. Leider, Investors Arbitration Specialist, San Diego, California.

Merrill Lynch Pierce Fenner & Smith, Inc. and Roger P. Gugger ("**Respondents**") were represented by John J. Kilkenney, Esq., Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

### **CASE INFORMATION**

Claimant's Statement of Claim was filed on or about January 8, 1996. Claimant's Submission Agreement was signed on January 23, 1996.

Respondents Joint Statement of Answer was filed on or about April 19, 1996. The Submission Agreement for Merrill Lynch Pierce Fenner & Smith, Inc. was signed on April 19, 1996. The Submission Agreement for Roger P. Gugger was signed on April 1, 1996.

### **HEARING INFORMATION**

The hearing was held on March 12 and 13, 1997 in San Diego for a total of 4 sessions.

### **CASE SUMMARY**

Claimant alleges that the Respondents failed to act in good faith by negligently and fraudulently misrepresenting the sale of the Euro Disney shares. Claimant further alleges that the Respondents actions constituted fraud and that the Respondents breached their fiduciary duty to the Claimant.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argue that no misrepresentations were made regarding the sale of Euro Disney and that the Claimant is a sophisticated investor who made his own investment decisions and was capable of evaluating any risk involved with his purchases. The Respondents further argue that the Claimant's trade was but one in a broader pattern of trading in which the Claimant had both profited and suffered losses.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$39,858 plus interest, costs and fees. Additionally, Claimant requested an unspecified amount of punitive damages.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with NASD Regulation, Inc., Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimant is awarded and Merrill Lynch shall pay to Claimant the sum of \$7,500. Interest shall accrue on that amount at 8% from the date of the award.
2. The Claimant is awarded and Roger P. Gugger shall pay to Claimant the sum of \$1,200. Interest shall accrue on that amount at 8% from the date of the award.
3. Claimants request for punitive damages is denied.
4. All other claims are denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were 4 sessions x \$400 = \$1,600 in forum fees. Pursuant to §43(b) of the

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NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to § 43(c) of the Code of Arbitration Procedure, Respondent Merrill Lynch Pierce Fenner & Smith is assessed all forum fees in this matter.

Total Fees	
4 Hearing Sessions @ \$400.00 =	\$1,600.00
Total	<u>\$1,600.00</u>

Merrill Lynch's Balance	\$1,600.00
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Pursuant to §43(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$120 and shall refund the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. by the Claimant Frederick Mengarelli.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Merrill Lynch.

Fees are payable to the NASD, Regulation, Inc.

Dated:

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William L. Merkin, Esq.  
Public Arbitrator, Presiding Chair

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Jennifer T. Messersmith, Esq.  
Public Arbitrator

  
James R. Collins  
Industry Arbitrator

\_\_\_\_\_  
March 14, 1997

Date Served: March 14, 1997

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Total	<u>\$1,600.00</u>

Merrill Lynch's Balance	\$1,600.00
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 William L. Merkin, Esq.  
 Public Arbitrator, Presiding Chair

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Jennifer T. Messersmith, Esq.  
 Public Arbitrator

\_\_\_\_\_  
 James R. Collins  
 Industry Arbitrator

Date Served: March 14, 1997

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Fees are payable to the NASD, Regulation, Inc.

Dated:

William L. Merkin, Esq.  
Public Arbitrator, Presiding Chair

  
Jennifer T. McQuinn, Esq.  
Public Arbitrator

James R. Collins  
Industry Arbitrator

Date Served: March 14, 1997

3/14/97