

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Alexander J. Gibbons

vs.

Case No.
97-05205

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

REPRESENTATION

For Claimant Alexander J. Gibbons ("Claimant") appeared Michael J. McAllister, Esq. of the law firm Satterlee Stephens Burke & Burke, LLP, located in New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") appeared Ralph Curio, Esq., in-house counsel for Merrill Lynch Pierce Fenner & Smith, located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on October 30, 1997.
Claimant's Submission Agreement was signed on October 8, 1997.

Respondent's Statement of Answer was filed on December 29, 1997.
Respondent's Submission Agreement was signed on November 26, 1997.

HEARING INFORMATION

Pre-Hearing Conferences:	March 17, 1998	-	1 session
Hearing Dates/Sessions:	April 21, 1999	-	2 sessions
	April 22, 1999	-	2 sessions

The pre-hearing conference was conducted telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant asserted that the claim for damages arose out of Respondent's alleged breach of contract in handling a loan in connection with his execution of stock options granted to him by his employer and the subsequent sale of the shares delivered to the Respondent. Claimant alleged that, on September 23, 1996, Respondent improperly sold 13,342 of 35,925 shares of Bristol-Myers stock which he owned. Claimant further alleged that the sale was contrary to both his clearly stated directions and to the agreement which he reached with Respondent on September 19, 1996. Claimant asserted that Respondent agreed to loan him the necessary funds on a short term basis so that he could exercise an incentive stock option of 5,466 shares of Bristol-Myers stock ("ISO shares"). Claimant contended that Respondent is liable to him for the resulting tax liability which he incurred due to Respondent's failure to properly perform the "swap" transaction of the ISO shares for stock certificates. Claimant contended that Respondent is also liable to him for the appreciation of the shares from the erroneous sale on September 23, 1996 to October 25, 1996, the date which Respondent told him it would not compensate him for his losses.

Respondent maintained that Claimant's order for the sale of 30,374 shares of stock delivered to it in connection with the exercise of stock options granted to Claimant by his employer was carried out in accordance with Claimant's direction and instructions. Respondents further maintained that, even if there was a breach, Claimant failed to mitigate his damages. Respondent asserted that Claimant was advised that, if there had been a mistake, it should have been addressed in a timely manner.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$400,000.00, plus interest, costs, and disbursements, and such other further relief as the Panel deems appropriate.

Respondent requested that the claim be dismissed in its entirety, that the costs and expenses of the proceeding be assessed against Claimant, and that it be awarded such other and further relief as the Panel seems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with NASD Regulation, Inc.

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. Claimant's claims are hereby denied in their entirety;
2. All other claims are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Respondent has paid NASD Regulation, Inc. the \$1,200.00 member surcharge previously invoiced.

Claimant is hereby liable for and shall pay the sum of \$600.00, representing postponement fees.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that NASD Regulation, Inc. will retain the \$250.00 non-refundable filing fee paid by Claimant and have assessed the following Forum Fees:

1 pre-hearing conference (with panel) x 600.00	=	\$ 600.00
4 hearing sessions x \$600.00	=	\$2,400.00
Total Forum Fees	=	\$3,000.00

1. Claimant is hereby liable for the sum of \$1,500.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc. and, therefore, is liable for and shall remit the balance of \$900.00.
2. Respondent is hereby liable for and shall pay the sum of \$1,500.00, representing one-half of the total forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Donald Ferguson, Esq.	-	Public Chairperson
Daniel E. Miller, Esq.	-	Public Arbitrator
Alfred H. Kingon	-	Public Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

Donald Ferguson
Donald Ferguson, Esq.

Date of decision: May 7, 1999

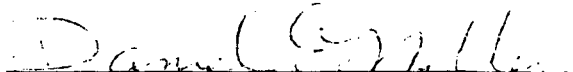
I, **Donald Ferguson, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Donald Ferguson
Donald Ferguson, Esq.

ARBITRATION PANEL


Donald Ferguson, Esq.	-	Public Chairperson
Daniel E. Miller, Esq.	-	Public Arbitrator
Alfred H. Kingon	-	Public Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Daniel E. Miller, Esq.

Date of decision: May 7, 1999

I, **Daniel E. Miller, Esq.**, 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.


Daniel E. Miller, Esq.