

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Steven J. Rottman, Claimant v. Merrill Lynch Pierce Fenner & Smith Inc., Jeffrey Marc Krull,
and Martin Krull, Respondents

Case Number: 99-00718

Hearing Site: Los Angeles, California

Nature of Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

David T. Stowell, Esq.
Stowell, Zeilenga & Ruth
Westlake Village, California

For Respondent:

Merrill Lynch Pierce Fenner & Smith Inc.

Thomas L. Taylor, III, Esq.
Marcela L. Cuadrado, Esq.
Morgan, Lewis & Bocius LLP
Los Angeles, California

Jeffrey Marc Krull

In Propria Persona
Durham, North Carolina

Martin Krull

Irving M. Einhorn, Esq.
Law Offices of Irving M. Einhorn
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: February 12, 1999

Statement Clarifying Damages filed: April 7, 1999

Claimant's Uniform Submission Agreement signed: June 8, 1998

Statement of Answer filed by Respondent Merrill Lynch Pierce Fenner & Smith Inc.: July 23,
1999

Respondent Merrill Lynch Pierce Fenner & Smith Inc.'s Uniform Submission Agreement signed: June 15, 1999

Statement of Answer filed by Respondent Martin Krull: December 15, 1999

Respondent Martin Krull's Uniform Submission Agreement signed: December 14, 1999

CASE SUMMARY

Claimant alleged unauthorized trading, unsuitability, churning, constructive fraud, fraud, breach of fiduciary duty, violation of Section 10(b) and Rule 10(b)-5, fraud, and negligence.

Respondents Merrill Lynch Pierce Fenner & Smith Inc. and Martin Krull denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested \$223,087.00 in compensatory damages, punitive damages, attorney's fees and costs as determined by the Panel.

Respondents Merrill Lynch Pierce Fenner & Smith Inc. and Martin Krull requested dismissal of the Claimant's Statement of Claim in its entirety, including costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 17, 2000, Claimant advised NASD Dispute Resolution ("NASD-DR") that Respondent Jeffrey Marc Krull was under Chapter 7 bankruptcy protection and that the above-referenced matter was stayed with respect to Respondent Jeffrey Marc Krull.

On October 7, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 7, 2003, Respondent Merrill Lynch Pierce Fenner & Smith Inc.'s counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On February 4, 2003, Claimant dismissed Respondent Martin Krull with prejudice and Respondent Jeffrey Marc Krull without prejudice.

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) Respondent Merrill Lynch Pierce Fenner & Smith Inc. is liable to and shall pay Claimant the sum of \$73,042.00 in compensatory damages.
- 2) Respondent Merrill Lynch Pierce Fenner & Smith Inc. is liable to and shall pay Claimant interest in the amount of \$6,378.00 from January 1, 1997 until September 30, 1997.
- 3) Respondent Merrill Lynch Pierce Fenner & Smith Inc. is liable to and shall pay Claimant attorneys' fees in the amount of \$29,217.00
- 4) Respondent Merrill Lynch Pierce Fenner & Smith Inc. is liable to and shall pay Claimant costs in the amount of \$1,798.00.
- 5) All other relief requested and not expressly granted is denied.

FEEES

Pursuant to the Code of Arbitration Procedure ("the Code"), the following fees are assessed:

Filing Fees

NASD- DR received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 200.00 |
|--------------------------|-------------|

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 Inc. and the following fees are assessed:

| | |
|----------------------------|----------------------|
| Member Surcharge | = \$ 1,500.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | = \$ 2,500.00 |
| Total Member Fees | = \$ 4,600.00 |

Adjournment Fees

The following adjournment fees are assessed:

September 19 – 25, 2001, adjournment stipulated by all party
representatives = \$ 750.00

The Panel assessed the fee equally amongst Claimant and Respondent Merrill Lynch Pierce
Fenner & Smith Inc.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A
pre-hearing conference and hearing session is any meeting between the parties and the
Chairperson and/or the Panel that lasts four (4) hours or less. The following fees are assessed:

(1) Pre-hearing conference sessions with the Chair @ \$450.00/session = \$ 450.00
Pre-hearing conference: June 17, 2003 1 session

(3) Pre-hearing conference sessions with the Panel @ \$750.00/session = \$ 2,250.00
Pre-hearing conferences: December 21, 2000 1 session
April 9, 2002 1 session
May 19, 2003 1 session

(11) Hearing sessions @ \$750.00/session = \$ 8,250.00
Hearings: October 7, 2003 2 sessions
October 8, 2003 2 sessions
October 9, 2003 2 sessions
October 10, 2003 2 sessions
October 24, 2003 3 sessions

Total Forum Fees = \$10,950.00

1. The Panel assessed \$3,285.00 of the forum fees to Claimant Steven J. Rottman.
2. The Panel assessed \$7,665.00 of the forum fees to Respondent Merrill Lynch Pierce Fenner
& Smith Inc.

Fee Summary

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

| | |
|--|-----------------------|
| Initial Filing Fee | = \$ 200.00 |
| Adjournment Fee | = \$ 375.00 |
| <u>Forum Fees</u> | <u>= \$ 3,285.00</u> |
| Total Fees | = \$ 3,860.00 |
| <u>Less payments</u> | <u>= \$(1,250.00)</u> |
| Balance Due NASD Dispute Resolution | = \$ 2,610.00 |

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

| | |
|--|------------------------|
| Member Fees | = \$ 4,600.00 |
| Adjournment Fee | = \$ 375.00 |
| <u>Forum Fees</u> | <u>= \$ 7,665.00</u> |
| Total Fees | = \$12,640.00 |
| <u>Less payments</u> | <u>= \$ (4,600.00)</u> |
| Balance Due NASD Dispute Resolution | = \$ 8,040.00 |

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

| | | |
|----------------------------|---|------------------------------------|
| Robert E. Lawson, Sr., CPA | - | Public Arbitrator, Presiding Chair |
| Robert H. Koenig, Esq. | - | Public Arbitrator |
| William A. Husa | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Robert E. Lawson, Sr., CPA
Chair, Public Arbitrator

Signature Date

Robert H. Koenig, Esq.
Public Arbitrator

Signature Date

William A. Husa
Non-Public Arbitrator

Signature Date

November 20, 2003
Date of Service

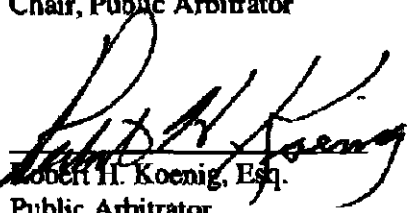
ARBITRATION PANEL

| | | |
|----------------------------|---|------------------------------------|
| Robert E. Lawson, Sr., CPA | - | Public Arbitrator, Presiding Chair |
| Robert H. Koenig, Esq. | - | Public Arbitrator |
| William A. Husa | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Robert E. Lawson, Sr., CPA
Chair, Public Arbitrator

Signature Date


Robert H. Koenig, Esq.
Public Arbitrator


Signature Date

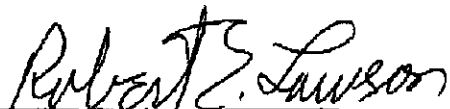
William A. Husa
Non-Public Arbitrator

Signature Date

ARBITRATION PANEL

| | | |
|----------------------------|---|------------------------------------|
| Robert E. Lawson, Sr., CPA | - | Public Arbitrator, Presiding Chair |
| Robert H. Koenig, Esq. | - | Public Arbitrator |
| William A. Husa | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures



Robert E. Lawson, Sr., CPA
Chair, Public Arbitrator

11/19/03

Signature Date

Robert H. Koenig, Esq.
Public Arbitrator

Signature Date

William A. Husa
Non-Public Arbitrator

Signature Date

ARBITRATION PANEL

| | | |
|----------------------------|---|------------------------------------|
| Robert E. Lawson, Sr., CPA | - | Public Arbitrator, Presiding Chair |
| Robert H. Koenig, Esq. | - | Public Arbitrator |
| William A. Husa | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Robert E. Lawson, Sr., CPA
Chair, Public Arbitrator

Signature Date

Robert H. Koenig, Esq.
Public Arbitrator

Signature Date

William A. Husa

William A. Husa
Non-Public Arbitrator

11-18-2003
Signature Date