

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

John Gauthier, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Dorothy M. Wenker and Ken LePori (Respondents).

Case Number: 99-01583

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant, John Gauthier, hereinafter referred to as "Claimant": Karen D. Smith, Esq., Wetzel, Henri & Drucker, LLP, Houston, Texas.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Dorothy M. Wenker ("Wenker") and Ken LePori ("LePori"), hereinafter collectively referred to as "Respondents": Kevin Thomas Duffy, Esq., Merrill Lynch, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 5, 1999

Claimant signed the Uniform Submission Agreement: March 30, 1999

Statement of Answer filed by Respondents on or about: May 4, 1999

Respondent, Merrill Lynch, signed the Uniform Submission Agreement: April 29, 1999

Respondent, Ken LePori, signed the Uniform Submission Agreement: April 26, 1999

CASE SUMMARY

Claimant asserted the following causes of action: unconscionable acts and omissions. The causes of action relate to the purchase of 1200 shares of an initial public offering of globe.com stock on November 13, 1998 for a total purchase price of \$56,091.92.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim failed to state claims upon which relief could be granted; Claimant is estopped from asserting the claims set forth in the claim due to his own acts and conduct and the acts and conduct of his agents and those acting on

his behalf; Claimant, acting with full knowledge of the facts, ratified, approved, accepted, acquiesced in and confirmed in all respects the acts complained of in the Statement of Claim; Claimant failed to exercise due diligence and was reckless in the supervision of his financial affairs and, in particular, the operation of his Merrill Lynch account at issue; Claimant was negligent in the supervision of his financial affairs, in particular, the operation of their Merrill Lynch account at issue; and Claimant failed to mitigate his alleged damages.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$100,000
Punitive Damages	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents requested:

Dismissal	
Attorneys' Fees	unspecified
Other Costs	unspecified

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, Dorothy M. Wenker, did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

AWARD

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

1. The Statement of Claim filed by John Gauthier is denied in its entirety and dismissed with prejudice; and
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$225

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge = \$1,000
Pre-hearing process fee = \$600
Hearing process fee = \$1,500

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) pre-hearing session with Panel x \$750 = \$750
Pre-hearing conference: October 11, 1999 1 session

Two (2) Hearing session x \$750 = \$1,500
Hearing Date: January 19, 2000 2 sessions

Total Forum Fees = \$2,250

1. The Panel has assessed \$750 of the forum fees to John Gauthier.
2. The Panel has assessed \$1,500 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

1. Claimant, John Gauthier, be and hereby is solely liable for:


Initial Filing Fee = \$225
Forum Fees = \$750

Total Fees = \$975
Less payments = \$975

Balance Due NASD Regulation, Inc.	= \$0
2. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., be and hereby is solely liable for:	
Member Fees	= \$3,100
Forum Fees	= \$1,500
<hr/> Total Fees	<hr/> = \$4,600
Less payments	= \$3,100
Balance Due NASD Regulation, Inc.	= \$1,500

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures


W. Jerry Hoover, Esq.
Public Arbitrator, Presiding Chair

Feb. 17, 2000
Signature Date

Richard R. Nelson
Public Arbitrator

Signature Date

John A. Dewald
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

TO: MARY DNYAN

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Balance Due NASD Regulation, Inc.	= \$0
2. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., be and hereby is solely liable for:	
Member Fees	= \$3,100
Forum Fees	= \$1,500
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Total Fees	= \$4,600
Less payments	= \$3,100
Balance Due NASD Regulation, Inc.	= \$1,500

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

W. Jerry Hoover, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Richard R. Nelson
Public Arbitrator

2-17-2000
Signature Date

John A. Dewald
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Balance Due NASD Regulation, Inc.

= \$0

2. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., be and hereby is solely liable for:

Member Fees

= \$3,100

Forum Fees

= \$1,500

Total Fees

= \$4,600

Less payments

= \$3,100

Balance Due NASD Regulation, Inc.

= \$1,500

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

W. Jerry Hoover, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Richard R. Nelson
Public Arbitrator

Signature Date


John A. Dewald
Industry Arbitrator

2/16/20
Signature Date

Date of Service (For NASD office use only)