

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith, Inc.

vs.

Case No. 99-04191

Name of Respondent

Josh D. Kelso

REPRESENTATION OF PARTIES

Claimant, Merrill Lynch Pierce Fenner & Smith, Inc., hereinafter referred to as "Claimant":
Jonathan H. Rudd, Esq., McNees, Wallace & Nurick, Harrisburg, Pennsylvania

Respondent, Josh D. Kelso, hereinafter referred to as "Respondent" did not appear for
hearing.

CASE INFORMATION

Statement of Claim filed on or about: September 13, 1999

Claimant signed the Uniform Submission Agreement: September 9, 1999

Statement of Answer filed by Respondent on or about: March 21, 2000

Respondent did not execute a Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged that on May 24, 1999 Respondent instructed Claimant to purchase 2,000 shares of Priceline at \$128.937 per share. Claimant further alleged that Claimant confirmed the order verbally on several occasions and a trade confirmation was sent to Respondent on May 24, 1999, confirming the number of shares, the price per share and reflecting a net amount due of \$259,361. Claimant asserted that on several occasions Respondent informed Claimant that the check was being forwarded for the trade. When funds to cover purchase were not received, Claimant liquidated the account on June 4, 1999, leaving a debit balance of \$72,782.09.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: negligence; Investor CreditLine Service Agreement with Merrill Lynch is contract of adhesion and is contrary to public policy, thus making it null and void; and Claimant failed to follow their own policy and procedures, thus excusing Respondent from any obligation.

In addition, Respondent asserted a Counterclaim in which he alleged breach of contract and negligence, for executing the erroneous purchase of Priceline shares and for wrongfully liquidating Respondent's account.

In response to the Counterclaim, Claimant denied Respondent's assertion that he only ordered 200 shares of Priceline, rather than the 2,000 ordered and confirmed. Claimant further contends that Respondent made no effort to make any payment on the order, and that the Investor CreditLine Service Agreement specifically authorizes Claimant to liquidate a customer's account if there is a failure to make payment upon demand.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$72,782.09
Interest	Amount Not Specified
Attorneys' Fees	Amount Not Specified
Other Costs	Amount Not Specified

Respondent requested:

Compensatory Damages	Amount in excess of \$75,000
Other Costs	Amount Not Specified

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-DR Code of Arbitration Procedure (the "Code").

Respondent did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Investor CreditLine Service Agreement, executed by Respondent on April 5, 1999, which contains an agreement to arbitrate any controversies, and having answered the claim, is bound by the determination of the Panel on all issues submitted.

The Panel granted Claimant's Motion to Dismiss the Counterclaim, and there being no response from Respondent, granted the Motion.

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 decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable to and shall pay to Claimant \$90,818.85 inclusive of pre-award interest at contractual rate; plus post-award interest at New York statutory rate from date award is served on parties until paid; and
2. That Respondent is liable to and shall pay to Claimant \$6,585.00 in attorneys' fees pursuant to contract; and
3. That Respondent is liable to and shall pay to Claimant \$3,536.61 in costs pursuant to contract; and
4. That the Counterclaim is denied in its entirety; and
5. That any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1,000
Counterclaim 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 is a party.

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:

1 Pre-hearing session with Panel x \$750		= \$750
Pre-hearing conference:	July 10, 2000	1 session
1 Hearing sessions x \$750		= <u>\$750</u>
Hearing Date:	October 18, 2000	1 session
Total Forum Fees		= \$1,500

The Panel assessed \$1,500 of the forum fees to Respondent.

Fee Summary

Claimant is solely liable for:

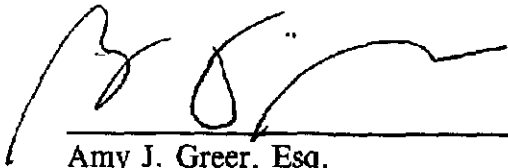
Initial Filing Fee	= \$1,000
Member Fees	= <u>\$3,100</u>
Total Fees	= \$4,100
Less payments	= <u>\$4,850</u>
Balance to be refunded to Claimant	= \$750

Respondent is solely liable for:

Counterclaim Filing Fee	= \$225
Forum Fees	= <u>\$1,500</u>
Total Fees	= \$1,725
Less payments	= <u>\$1,000</u>
Balance Due NASD Dispute Resolution, Inc.	= \$725

All balances are due and payable to NASD Dispute Resolution, Inc.

CONCURRING ARBITRATORS' SIGNATURES



Amy J. Greer, Esq.
Public Arbitrator, Presiding Chairman

11-3-00

Date Signed

Alan Z. Lefkowitz
Public Arbitrator

Date Signed

Jeffrey E. DeLuca
Industry Arbitrator

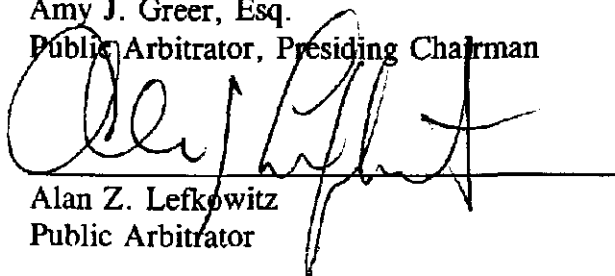
Date Signed

November 10, 2000

Date of Service (For NASD-DR office use only)

CONCURRING ARBITRATORS' SIGNATURES

Amy J. Greer, Esq.
Public Arbitrator, Presiding Chairman



Alan Z. Lefkowitz
Public Arbitrator

Date Signed

November 3, 2000

Date Signed

Jeffrey E. DeLuca
Industry Arbitrator

Date Signed

November 10, 2000

Date of Service (For NASD-DR office use only)

CONCURRING ARBITRATORS' SIGNATURES

Amy J. Greer, Esq.
Public Arbitrator, Presiding Chairman

Date Signed

Alan Z. Lefkowitz
Public Arbitrator

Date Signed



Jeffrey E. DeLuca
Industry Arbitrator



Date Signed

November 10, 2000
Date of Service (For NASD-DR office use only)