Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Bart Prato

Case Number: 02-03158

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Bart Prato, hereinafter referred to as "Claimant": Darren C. Blum, Esq., Randall C. Place, Esq. and Deborah A. Dickstein, Esq., Blum, Silver & Schwartz, LLP, Plantation, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Keith Olin, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 30, 2002.
Claimant signed the Uniform Submission Agreement: May 17, 2002.
Statement of Answer filed by Respondent on or about: August 14, 2002.
Respondent signed the Uniform Submission Agreement: August 12, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: violation of industry rules; violation of Section 517.301 of the Florida Statutes; breach of contract; breach of fiduciary duty; common law fraud; negligence; and, negligent supervision, hiring and retention of employees. The causes of action relate to the purchase and sale of shares of numerous stocks in Claimant's account including, but not limited to, the following: Art Technology Group; BroadCom Corp.; Bea Systems, Inc.; Broadcade Communications Systems; CMGI, Inc.; Citrix Systems; Ciena Corp.; Digix, Inc.; Exodus Communications; Juniper Networks, Inc.; JDS Uniphase; Network Appliance, Inc.; Quest Communications, Inc.; and, Vishay Inter Technology.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of $400,000.00, plus interest from the date of purchase, or reasonable market return, rescission, attorneys' fees to be determined by a court of competent jurisdiction, punitive damages, costs and any other relief deemed just and proper.

Respondent requested an award dismissing the Statement of Claim in its entirety and granting such other and further relief as the Panel deemed just and proper, including the assessment of all forum fees against Claimant. In addition, Respondent Merrill asserted that it intended to seek attorney's fees and costs from a court of competent jurisdiction pursuant to Sections 57.105 and 517.211(6) of the Florida Statutes.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies.

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:

Respondent is liable on the claims of unsuitability, breach of fiduciary duty and negligent supervision and shall pay to Claimant compensatory damages in the amount of $75,000.00, plus interest at the Florida statutory rate from the date of service of the Award to the date of payment of the Award.

Respondent is liable and shall pay to Claimant the sum of $300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages and for damages pursuant to fraud and Section 517.301 of the Florida Statutes, are denied.

FEES

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

Filing Fees
NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= $ 300.00

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

Member surcharge	= $1,700.00
Pre-hearing process fee	= $ 750.00
Hearing process fee	= $2,750.00

Adjournment Fees
Adjournment granted during these proceedings:

July 29-August 1, 2003, joint mediation adjournment request. No fees assessed pursuant to Rule 10403 of the Code.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ $450.00			= $ 450.00
Pre-hearing conference:	May 30, 2003	1 session	
Two (2) Pre-hearing sessions with the Panel @ $1,125.00			= $ 2,250.00
Pre-hearing conferences:	December 12, 2002	1 session	
	May 19, 2004	1 session	
Five (5) Hearing sessions @ $1,125.00			= $ 5,625.00
Hearing Dates:	June 1, 2004	2 sessions	
	June 2, 2004	2 sessions	
	June 3, 2004	1 session	
Total Forum Fees			= $ 8,325.00

The Panel has assessed the total forum fees of $8,325.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= $ 300.00
Total Fees	= $ 300.00
Less payments	= $ 300.00
Balance Due NASD Dispute Resolution	= $ 0.00

Respondent is solely liable for:

Member Fees	= $ 5,200.00
Forum Fees	= $ 8,325.00
Total Fees	= $13,525.00
Less payments	= $ 5,200.00
Balance Due NASD Dispute Resolution	= $ 8,325.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James Barry Wright	-	Public Arbitrator, Presiding Chairperson
Abe Mintz	-	Public Arbitrator
James C. Devine	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ 06/09/04

James Barry Wright
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ 06/09/04

Abe Mintz
Public Arbitrator

Signature Date

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James C. Devine
Non-Public Arbitrator

Signature Date

06/10/04

Date of Service (For NASD Dispute Resolution office use only)

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