Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Mark B. Summers

Case Number: 02-03301
(Consolidated with 02-03302)

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

Hearing Site: Boca Raton, Florida

In the Matter of Arbitration Between:

Name of the Claimant
Mark B. Summers

Case Number: 02-03302
(Consolidated with 02-03301)

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

Mark B. Summers, hereinafter referred to as "Claimant" appeared pro se until on or about October 10, 2003. Thereafter, Darren C. Blum, Esq. and Wayne H. Schwartz, Esq., Blum, Silver & Schwartz, L.L.P., Plantation, Florida appeared as counsel.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent": Bennett Falk, Esq., Bressler, Amery & Ross, Miramar, Florida.

CASE INFORMATION

The following pleadings were filed in **Case Number 02-03301:**
Statement of Claim filed on or about: May 26, 2002.
Claimant signed the Uniform Submission Agreement: May 24, 2002.
Motion to Consolidate, Motion to Dismiss and Statement of Answer filed by Respondent on or about: July 26, 2002.
Respondent signed the Uniform Submission Agreement: July 26, 2002.
Response to Motion to Consolidate, Motion to Dismiss and Supplement to Statement of Claim filed by Claimant on or about: August 12, 2002.
Response to Claimant's Supplement to Statement of Claim filed by Respondent on or about: August 22, 2002.

The following pleadings were filed in **Case Number 02-03302:**
Statement of Claim filed on or about: May 26, 2002.
Claimant signed the Uniform Submission Agreement: May 24, 2002.

Motion to Consolidate, Motion to Dismiss and Statement of Answer filed by Respondent on or about: July 26, 2002.
Respondent signed the Uniform Submission Agreement: July 26, 2002.
Response to Motion to Consolidate, Motion to Dismiss and Supplement to Statement of Claim filed by Claimant on or about: August 12, 2002.
Response to Claimant's Supplement to Statement of Claim filed by Respondent on or about: August 22, 2002.

The following pleadings were filed in **Case Number 02-03301 and Case Number 02-03302:**
Motion to Amend the Statement of Claim filed by Claimant on or about: May 2, 2003.
Amended Statement of Claim filed by Claimant on or about: May 20, 2003.
Answer to Amended Statement of Claim filed by Respondent on or about: June 19, 2003.
Unopposed Motion to Amend Statement of Claim filed by Claimant on or about: February 6, 2004.
Second Amended Statement of Claim filed by Claimant on or about: February 6, 2004.
Answer to Second Amended Statement of Claim filed by Respondent on or about: March 2, 2004.

CASE SUMMARY

Claimant asserted the following causes of action in both cases: 1) violation of industry rules, including, but not limited to NYSE's "Know your customer" standard (Rule 405) and NASD'S customer suitability standard (Rule 2310); 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; and, 5) negligence. The causes of action relate to the purchase of Internet Capital Group stock in Claimant's accounts.

Unless specifically admitted in its Answers, Respondent denied the allegations made in the Statements of Claim and Amended Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested combined compensatory damages from both cases in the total amount of $75,640.00, interest at the legal rate from the date of purchase or reasonable market return, recission, punitive damages, costs and for such other relief as is just and proper.

Respondent requested that the Statements of Claim and the Amended Statements of Claim be dismissed in their entirety and that the costs of this proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On or about August 20, 2002, Claimant advised NASD Dispute Resolution that he was in agreement with Respondent that the parties and allegations in Case Number 02-03301 and Case Number 02-03302 were the same with the only difference being the account number at issue. Therefore, Claimant stated that he had no objection to Respondent's Motion to Consolidate Case Number 02-03301 with Case Number 02-03302.

On or about May 27, 2003, the sole arbitrator issued an Order that granted Claimant's Motion to Amend the Statement of Claim in order to increase the amount of compensatory damages sought and include punitive damages. In addition, the Order stated that two additional arbitrators would be appointed to hear the

consolidated case.
On or about February 20, 2004, the Panel issued an Order that granted Claimant's Unopposed Second Motion to Amend the Statement of Claim.

Respondent's Motion to Dismiss was not ruled on prior to the final hearing in this matter. After the final hearings concluded, the Panel made a determination to deny the motion.

During the final hearings in this matter, Claimant made a Motion for Sanctions against Respondent for its failure to comply with a discovery order issued on January 28, 2004. The Panel granted Claimant's motion. In addition, Respondent made a Motion to Strike Testimony. The Panel denied Respondent's motion.

The Panel wishes to include in the record of this proceeding that during the final hearing, Respondent's attorney indicated he had not received a fair hearing because he was interrupted on cross-examination of the Claimant, by the Chair, and because the Panel admitted the Merrill Lynch Letter of Acceptance, Waiver and Consent to NASD Department of Enforcement (Statement of Claim Exhibit 2, Item 5) into evidence.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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) Respondent is liable on the claim of negligence and shall pay to Claimant compensatory damages, including pre-judgment interest, in the amount of $57,920.00.

2) Respondent is liable and shall reimburse Claimant his NASD Dispute Resolution filing fees in the amount of $425.00.

3) Claimant's Motion for Sanctions was granted by the Panel and, therefore, Respondent is to pay Claimant the amount of $5,000.00 for its failure to comply with the Panel's January 28, 2004 Order on Claimant's discovery requests.

4) Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, 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 (Case Number 02-03301) = $ 300.00

Initial claim filing fee (Case Number 02-03302)	= $ 125.00

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. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge (Case Number 02-03301)	= $1,700.00
Member surcharge (Case Number 02-03302)	= $ 425.00
Pre-hearing process fee (Case Number 02-03301 cons./w 02-3302)	= $ 750.00
Hearing process fee (Case Number 02-03301 cons.w/ 02-3302)	= $2,750.00

Adjournment Fees

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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 the Panel @ $750.00			= $ 750.00
Pre-hearing conference:	July 25, 2003	1 session	
Four (4) Hearing sessions with the Panel @ $750.00			= $3,000.00
Hearing Dates:	March 2, 2004	2 sessions	
	March 3, 2004	2 sessions	
Total Forum Fees			= $3,750.00

The Panel has assessed the total forum fees of $3,750.00 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 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 during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee (Case No. 02-03301)	= $ 300.00

Initial Filing Fee (Case No. 02-03302)	= $ 125.00
Total Fees	= $ 425.00
Less payments	= $ 425.00
Balance Due NASD Dispute Resolution	= $ 0.00

Respondent is solely liable for:

Member Fees (Case No. 02-03301)	= $ 5,200.00
Member Fees (Case No. 02-03302)	= $ 425.00
Forum Fees	= $ 3,750.00
Total Fees	= $ 9,375.00
Less payments	= $ 6,375.00
Balance Due NASD Dispute Resolution	= $ 3,000.00

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

ARBITRATION PANEL

Patricia J. Murphy, JD - *Public Arbitrator, Presiding Chairperson*
Francis D. Sheehy, Esq. - *Public Arbitrator*
Lester H. Weinberg - *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

/s/
Patricia J. Murphy, JD
Public Arbitrator, Presiding Chairperson

03/05/04
Signature Date

/s/
Lester H. Weinberg
Non-Public Arbitrator

03/06/04
Signature Date

Concurring in Part and Dissenting in Part Arbitrator's Signature

Arbitrator Sheehy dissents with respect to the Panel's decision to assess sanctions to Respondent. Arbitrator Sheehy concurs with this Award in all other respects.

/s/
Frances D. Sheehy, Esq.
Public Arbitrator

03/05/04
Signature Date

03/09/04
Date of Service (For NASD Dispute Resolution office use only)

Initial Filing Fee (Case No. 02-03302)	= $ 125.00
Total Fees	= $ 425.00
Less payments	= $ 425.00
Balance Due NASD Dispute Resolution	= $ 0.00

Respondent is solely liable for:

Member Fees (Case No. 02-03301)	= $ 5,200.00
Member Fees (Case No. 02-03302)	= $ 425.00
Forum Fees	= $ 3,750.00
Total Fees	= $ 9,375.00
Less payments	= $ 6,375.00
Balance Due NASD Dispute Resolution	= $ 3,000.00

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

ARBITRATION PANEL

Patricia J. Murphy, JD - *Public Arbitrator, Presiding Chairperson*
Francis D. Sheehy, Esq. - *Public Arbitrator*
Lester H. Weinberg - *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

Patricia J. Murphy, JD
Public Arbitrator, Presiding Chairperson

3/5/04
Signature Date

Lester H. Weinberg
Non-Public Arbitrator

Signature Date

Concurring in Part and Dissenting in Part Arbitrator's Signature

Arbitrator Sheehy dissents with respect to the Panel's decision to assess sanctions to Respondent. Arbitrator Sheehy concurs with this Award in all other respects.

Frances D. Sheehy, Esq.
Public Arbitrator

Signature Date

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

Initial Filing Fee (Case No. 02-03302)	= $ 125.00
Total Fees	= $ 425.00
Less payments	= $ 425.00
Balance Due NASD Dispute Resolution	= $ 0.00

Respondent is solely liable for:

Member Fees (Case No. 02-03301)	= $ 5,200.00
Member Fees (Case No. 02-03302)	= $ 425.00
Forum Fees	= $ 3,750.00
Total Fees	= $ 9,375.00
Less payments	= $ 6,375.00
Balance Due NASD Dispute Resolution	= $ 3,000.00

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

ARBITRATION PANEL

Patricia J. Murphy, JD - *Public Arbitrator, Presiding Chairperson*
Francis D. Sheehy, Esq. - *Public Arbitrator*
Lester H. Weinberg - *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

Patricia J. Murphy, JD
Public Arbitrator, Presiding Chairperson

Signature Date

Lester H. Weinberg
Non-Public Arbitrator

3/06/04
Signature Date

Concurring in Part and Dissenting in Part Arbitrator's Signature

Arbitrator Sheehy dissents with respect to the Panel's decision to assess sanctions to Respondent. Arbitrator Sheehy concurs with this Award in all other respects.

Frances D. Sheehy, Esq.
Public Arbitrator

Signature Date

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

NASD Dispute Resolution
Arbitration No. 02-03301
(consolidated w/ 02-03302)
Award Page 5

Initial Filing Fee (Case No. 02-03302)	= $ 125.00
Total Fees	= $ 425.00
Less payments	= $ 425.00
Balance Due NASD Dispute Resolution	= $ 0.00

Respondent is solely liable for:

Member Fees (Case No. 02-03301)	= $ 5,200.00
Member Fees (Case No. 02-03302)	= $ 425.00
Forum Fees	= $ 3,750.00
Total Fees	= $ 9,375.00
Less payments	= $ 6,375.00
Balance Due NASD Dispute Resolution	= $ 3,000.00

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

ARBITRATION PANEL

Patricia J. Murphy, JD	-	*Public Arbitrator, Presiding Chairperson*
Francis D. Sheehy, Esq.	-	*Public Arbitrator*
Lester H. Weinberg	-	*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

Patricia J. Murphy, JD — Signature Date
Public Arbitrator, Presiding Chairperson

Lester H. Weinberg — Signature Date
Non-Public Arbitrator

Concurring in Part and Dissenting in Part Arbitrator's Signature
Arbitrator Sheehy dissents with respect to the Panel's decision to assess sanctions to Respondent. Arbitrator Sheehy concurs with this Award in all other respects.

Frances D. Sheehy, Esq. — Signature Date 3/5/04
Public Arbitrator

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