

**Amended Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Shari Nolan, Claimant v. Phillip D. Hurner and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondents

Case Number: 02-01455

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Richard A. Roth, Esq.
The Roth Law Firm, PLLC
New York, New York

For Respondents:

Blanca F. Young, Esq.
Munger, Tolles & Olson LLP
San Francisco, California

CASE INFORMATION

Statement of Claim filed: March 11, 2002

First Amended Statement of Claim filed: August 4, 2003

Claimant's Uniform Submission Agreement signed: March 1, 2002

Joint Statement of Answer of Respondents Phillip D. Hurner and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") filed: May 10, 2002

Replacement page 2 for Respondents' Joint Statement of Answer of May 10, 2002 filed: May 20, 2002

Joint Statement of Answer of Respondents Phillip D. Hurner and Merrill Lynch to Claimant's First Amended Statement of Claim filed: October 24, 2003

Respondent Merrill Lynch's Uniform Submission Agreement signed: March 28, 2002

CASE SUMMARY

Claimant alleged the following claims with respect to investments in various securities, including but not limited to, investments in Dell Computer Co: 1) Breach of Fiduciary Duty; 2) Fraud; 3) Constructive Fraud; 4) Failure to Supervise; and 5) Violation of Federal and State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

In the initial Statement of Claim, Claimant requested damages of \$12,000,000.00, a complete accounting with respect to Claimant's accounts, and costs.

In the First Amended Statement of Claim, Claimant requested:

1. Compensatory damages in an amount according to proof, but not less than \$10,000,000.00;
2. Disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondents as a result of their unlawful acts and practices in an amount according to proof;
3. Attorney's fees and costs;
4. Pre- and post judgment interest at the legal rate;
5. Punitive damages in an amount according to proof; and
6. Such other and further relief as the Panel may deem just and proper.

Respondents requested:

1. Dismissal of Claimant's claims in their entirety;
2. Claimant take nothing through this action;
3. Costs, including attorneys' fees;
4. That Claimant's Claim be expunged from the publicly available record of Respondents; and
5. Such other relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On April 30, 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.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent Phillip D. Hurner did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The Panel reviewed and considered the positions of the parties relative to Respondents' request to file a post-hearing brief. The panel denied Respondents' request.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

The Panel reviewed and considered Claimant's submission of August 17, 2006 and Respondent Merrill Lynch's reply of August 31, 2006, regarding the rate of interest awarded in this matter. The Panel determined that the subject rate of interest shall be 7%.

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. All claims against Phillip D. Hurner are dismissed.
2. Respondent Merrill Lynch is solely liable for and shall pay to Claimant the sum of \$1,250,000.00 plus interest to accrue as of October 20, 2000, at the rate of 7% per annum until paid.
3. Respondent Merrill Lynch is solely liable for and shall pay to Claimant the sum of \$600.00 as reimbursement for Claimant's filing fee.
4. Claimant's claim for punitive damages is denied.
5. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Phillip D. Hurner's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to

NASD Notice to Members 99-09, Respondent Phillip D. Hurner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

6. Except as noted in paragraph 3 above, each party shall bear its own costs, including attorney's fees.
7. All other relief not expressly granted is denied.

FEES

Pursuant to 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	= \$600.00
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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, Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,500.00</u>
Total Member Fees	= \$10,000.00

Adjournment Fees

The following adjournment fees are assessed:

The Panel granted Claimant's request to postpone the July 26–30, 2004, hearing dates and assessed Claimant the \$1,200.00 postponement fee.

The Panel granted Claimant's request to postpone the January 24–28, and January 31-February 4, 2005, hearing dates and assessed Claimant the \$1,500.00 postponement fee.

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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:

(3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session		=	\$1,350.00
Pre-hearing conferences:	April 29, 2004	1 session	
	January 10, 2005	1 session	
	April 19, 2006	1 session	
 (3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session		=	\$3,600.00
Pre-hearing conferences:	October 2, 2003	1 session	
	January 14, 2005	1 session	
	July 6, 2005	1 session	
 (23) Hearing sessions @ \$1,200.00/session		=	\$27,600.00
Hearing Dates:	June 12, 2006	2 sessions	
	June 13, 2006	2 sessions	
	June 14, 2006	2 sessions	
	June 15, 2006	2 sessions	
	June 16, 2006	2 sessions	
	June 19, 2006	2 sessions	
	June 20, 2006	3 sessions	
	June 21, 2006	2 sessions	
	June 22, 2006	3 sessions	
	June 23, 2006	3 sessions	
 Total Forum Fees		=	\$32,550.00

The Panel assessed the \$32,550.00 in forum fees solely to Respondent Merrill Lynch.

Fee Summary

1. Claimant Shari Nolan is charged with the following fees and costs:		
Initial Filing Fee	= \$	600.00
<u>Adjournment Fees</u>	= \$	<u>2,700.00</u>
Total Fees	= \$	3,300.00
<u>Less Payments</u>	= \$(<u>4,500.00)</u>
Refund Paid To Claimant	= \$(1,200.00)
 2. Respondent Merrill Lynch is charged with the following fees and costs:		
Member Fees	= \$	10,000.00
Forum Fees	= \$	32,550.00
Total Fees	= \$	42,550.00
<u>Less Payments</u>	= \$(<u>42,550.00)</u>
Balance Due NASD-DR	= \$	0.00

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

ARBITRATION PANEL

Andrew E. Tanenbaum, Esq.	-	Public Arbitrator, Presiding Chair
Colleen C. Hammer, Esq.	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Andrew E. Tanenbaum, Esq.
Chair, Public Arbitrator

Signature Date

Colleen C. Hammer, Esq.
Public Arbitrator

Signature Date

Donald S. Duerson
Non-Public Arbitrator

Signature Date

Date of Service

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Donald S. Duerson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Andrew E. Tanenbaum, Esq.
Chair, Public Arbitrator

10/6/06
Signature Date

Colleen C. Hammer, Esq.
Public Arbitrator

Signature Date

Donald S. Duerson
Non-Public Arbitrator

Signature Date

10/13/06
Date of Service

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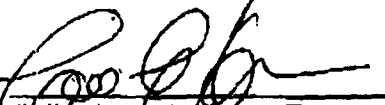
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Andrew E. Tanenbaum, Esq.
Chair, Public Arbitrator

Signature Date


Colleen C. Hammer, Esq.
Public Arbitrator

October 11, 2006
Signature Date

Donald S. Duerson
Non-Public Arbitrator

Signature Date

10/13/06
Date of Service

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Andrew E. Tanenbaum, Esq.
Chair, Public Arbitrator

Signature Date

Colleen C. Hammer, Esq.
Public Arbitrator

Signature Date


Donald S. Duerson
Non-Public Arbitrator

10-4-06
Signature Date

10/13/04
Date of Service