

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Karen L. Johnson, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., Joseph T. Pawelski and David B. Melquist, (Respondents)

Case Number: 00-04580

Hearing Site: Buffalo, New York

REPRESENTATION OF PARTIES

Claimant Karen L. Johnson, hereinafter referred to as "Claimant": Arthur N. Bailey, Esq., Arthur N. Bailey & Associates, Jamestown, NY.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., ("Merrill"), Joseph T. Pawelski ("Pawelski"), and David B. Melquist ("Melquist"), hereinafter collectively referred to as "Respondents": Carol E. Heckman, Esq., Harter Secrest & Emery LLP, Buffalo, NY.
Previously represented by : William J. Manning, Jr., Esq., Vice President and Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: October 13, 2000.

Claimant signed the Uniform Submission Agreement: October 10, 2000.

Statement of Answer filed by Respondents on or about: March 13, 2000.

Merrill signed the Uniform Submission Agreement: March 13, 2000.

Pawelski signed the Uniform Submission Agreement: February 6, 2001.

Melquist signed the Uniform Submission Agreement: January 29, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: fraud and misrepresentation under federal securities law; fraud and misrepresentation under common law; negligence; breach of contract in violation of NASD rules; and breach of fiduciary duty. Claimant's claim involved a modified single premium variable life insurance policy.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: The Statement of Claim fails to state a claim upon which relief can be granted; Claimant is barred from any recovery because claimant directed, authorized, consented to, acquiesced in, and ratified all transactions in the account; The Statement of Claim is barred based on NASD 10304, statute of limitations and

laches; The Statement of Claim is barred based on release and collateral estoppel; Claimant made all the investments decisions in regard to this account and any losses which may have been suffered by Claimant were caused by the investment decisions made by claimant and due to market conditions outside the control of respondents; Respondents are not liable to claimant in any amount because at all times relevant herein, respondents acted properly and in good faith with regard to claimant's accounts; and the claim is barred based on accord and satisfaction.

RELIEF REQUESTED

Claimant requested compensatory damages in the approximate amount of \$80,000.00, together with punitive damages, interest, the cost of the proceeding and attorney's fees.

Respondents requested a judgement dismissing the Statement of Claim in its entirety, along with the costs and attorneys' fees incurred in defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant's counsel submitted letters on October 24, 2002 and October 27, 2002 requesting the Panel review a Memorandum of Law. The Panel was advised of this request, but declined to review any post-hearing submissions.

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. Merrill and Pawelski are jointly and severally liable for and shall pay to Claimant the sum of \$9,000.00 as compensatory damages.
2. Claimant's claims against Melquist are hereby dismissed.
3. All other requests for relief are hereby denied.

FEES

Pursuant to 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 = \$ 225.00

Member Fees

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

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

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 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 Panel x \$750.00	= \$ 750.00
Pre-hearing conference: June 27, 2001 1 session	

Two (2) Hearing sessions x \$750.00	= \$1,500.00
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<u>Hearing Date:</u> October 16, 2002 2 Sessions	
Total Forum Fees	= \$2,250.00

The Panel has assessed all of the forum fees against Merrill.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 750.00

2. Merrill is solely liable for:

<u>Member Fees</u>	= \$3,100.00
<u>Forum Fees</u>	= \$2,250.00
<u>Total Fees</u>	= \$5,350.00
<u>Less payments</u>	= \$3,100.00
Balance Due NASD Dispute Resolution	= \$2,250.00

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

ARBITRATION PANEL

Philip M. Marshall, Esq.	-	Public Arbitrator, Presiding Chair
Thomas E. Webb, Jr., Esq.	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Philip M. Marshall, Esq.
Public Arbitrator, Presiding Chair

10/30/02

Signature Date

Thomas E. Webb, Jr., Esq.
Public Arbitrator

Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

November 21, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Philip M. Marshall, Esq.
Public Arbitrator, Presiding Chair



Thomas E. Webb, Jr., Esq.
Public Arbitrator

Signature Date

11/2/02
Signature Date

Robert Shiffra, Esq.
Non-Public Arbitrator

Signature Date

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Concurring Arbitrators' Signatures

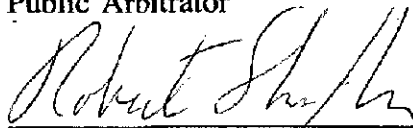
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Philip M. Marshall, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Thomas E. Webb, Jr., Esq.
Public Arbitrator

Signature Date



Robert Shiffra, Esq.
Non-Public Arbitrator

11-6-02
Signature Date

November 21, 2002

Date of Service (For NASD Dispute Resolution use only)