

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Candy Albano

Case No. 00-04600

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Candy Albano, hereinafter referred to as "Claimant": Gary W. Pollack, Esq., Coral Gables, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), hereinafter referred to as "Respondent": John A. Anthony, Esq. and Scott R. Lilly, Esq. of Gray Harris Robinson Shackelford Farrior, Tampa Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 11, 2000.

Claimant signed the Uniform Submission Agreement on: September 11, 2000.

Statement of Answer filed by Respondent on or about: February 6, 2001.

Respondent's Uniform Submission Agreement signed on: March 11, 2002 by Thomas J. Mullaney, Director and Senior Counsel on behalf of the firm.

Claimant's Notice of Amendment of Statement of Claim by Interlineation filed on or about: October 29, 2001.

CASE SUMMARY

Claimant asserted the following causes of action in connection with the handling of the funds in her 401K account at Merrill, upon the termination of her employment in April, 1999: breach of fiduciary duty and fraud.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing contained in Statement of Claim and asserted the following affirmative defenses: Claimant's claims are barred by the statute of fraud, the economic loss doctrine and the doctrine of laches; Claimant's losses, if any, were caused by Claimant's own inaction; Claimant's losses, if any, were caused by individuals not authorized by Merrill; Claimant's losses, if any, did not result from any breach of duty by Merrill because Merrill's conduct was consistent with any duty owed to Claimant; Claimant's claims lack merit because all

representations made by Merrill and reasonably relied upon by Claimant were true and correct; and, Claimant's losses, if any, were caused by the negligence or willful misconduct of individuals or entities other than Merrill.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$26,911.36, costs, interest, attorney's fees and punitive damages.

Respondent requested a dismissal of all claims against it.

OTHER ISSUES CONSIDERED AND DECIDED

During the evidentiary hearing, Claimant advised the arbitrator that she wished to withdraw her claim of fraud.

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

1. Respondent is found not liable, and, therefore, all claims against it are denied.
2. Any and all requests 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, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 150.00
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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	= \$ 600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

Adjournment Fees

No adjournments were requested during these proceedings.

Forum Fees and Assessments

The Arbitrator has the authority to assess 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:

Two (2) Pre-hearing sessions with the arbitrator x \$450.00	= \$ 900.00
Pre-hearing conference dates:	
May 15, 2001	1 session
August 7, 2001	1 session

Two (2) Hearing sessions x \$450.00	= \$ 900.00
Hearing Date:	
February 13, 2002	2 sessions

Total Forum Fees	= \$1,800.00
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The Arbitrator has assessed \$900.00 of the forum fees to Claimant.

The Arbitrator has assessed \$900.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 900.00

Total Fees	= \$1,050.00
Less payments	= \$ 600.00

Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00
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Respondent be and hereby is solely liable for:

Member Fees	= \$2,200.00
Forum Fees	= \$ 900.00

Total Fees	= \$3,100.00
Less payments	= \$2,200.00

Balance Due NASD Dispute Resolution, Inc.	= \$ 900.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Arthur C. Bivins, III

Sole Public Arbitrator

Arbitrator's Signature



Arthur C. Bivins, III
Sole Public Arbitrator

MAR. 14, 2002

Signature Date

March 14, 2002

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