

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Joan Martin
Claimant
and

00-05270
Dallas, Texas

Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Nicholas Papamichael
Respondents

REPRESENTATION OF PARTIES

Joan Martin ("**Claimant**") was represented by Richard C. Fooshee, Esq., Law offices of Richard Foshee, New York, New York.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and Nicholas Papamichael ("**Respondents**") were represented by John Kincade, Esq., Winstead Sechrest & Minick, P.C., Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about November 28, 2000. Submission Agreement of Claimant Joan Martin was signed on November 27, 2000.

Joint Statement of Answer was filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Nicholas Papamichael on or about January 22, 2001. Submission Agreement of Respondent was signed on Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. by Charles L. Henderson on January 18, 2001. Submission Agreement of Respondent Nicholas Papamichael was signed on January 18, 2001.

CASE SUMMARY

Claimant alleged that she invested the life insurance proceeds after her husband's death with Respondents. She purchased, in part, stock in RSL Communications on margin. Shortly thereafter, she sustained significant losses in her account. Claimant asserted causes of action to recover the losses including: fraud; negligence; breach of fiduciary duty.

Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted affirmative defenses including the following: The Statement of Claim failed to state a claim upon which relief can be granted; The Statement of Claim fails to particularize facts establishing a legal theory under which Respondents could be held liable for the alleged damages; Claimant is barred

from any recovery because she directed, authorized consented to, acquiesced in and/or ratified transaction in her account Merrill Lynch.

RELIEF REQUESTED

Claimant requested an award in the amount of \$207,107 in compensatory damages, pre-award interest, cancellation of debit balance; costs and expenses, attorney's fees, and an to her relief the Arbitration Panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc and Nicholas Papamichael are liable for and shall pay Claimant Joan Martin compensatory damages of seventy six thousand six hundred twenty one dollars (\$76,621.00);
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to 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 = \$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 is Merrill Lynch.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Arbitration Panel assesses 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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conference(s):	
April 10, 2001	1 session
August 30, 2001	1 session
Seven (7) Hearing sessions x \$1,125.00	= \$7,875.00
Hearing Date(s):	
September 5, 2001	2 sessions
September 6, 2001	2 sessions
September 7, 2001	3 session

Total Forum Fees = \$10,125.00

The Arbitration Panel has assessed \$10,125.00 of the forum fees to Respondent Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Joan Martin, shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 00.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Refund Due NASD Claimant:	= \$1,125.00

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$10,125.00
Total Fees	= \$14,725.00
<u>Less payments</u>	= \$2,100.00
Balance Due NASD Dispute Resolution, Inc.:	= \$12,625.00

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All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Alice Waters – Public Arbitrator, Presiding Chair
Harold Hunter -Public Arbitrator
Richard C. Corse -Non-Public Arbitrator

Concurring Arbitrators:

Alice Waters
Public Arbitrator, Presiding Chair

Signature Date

Harold Hunter
Public Arbitrator

Signature Date

Richard C. Corse
Non-Public Arbitrator

Signature Date

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Richard C. Corse - Non-Public Arbitrator

Concurring Arbitrators:

Alice Waters
Alice Waters
Public Arbitrator, Presiding Chair

10-17-01
Signature Date

Harold Hunter
Harold Hunter
Public Arbitrator

Signature Date

Richard C. Corse
Richard C. Corse
Non-Public Arbitrator

Signature Date

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Harold Hunter
Public Arbitrator

10/30/01

Signature Date

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Non-Public Arbitrator

Signature Date

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