

**AWARD**  
**NASD Dispute Resolution.**

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In the Matter of the Arbitration Between

Name of Claimant

Theresa Dean Smith

and

00-05667  
Dallas, Texas

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
Jay D. Arbetter  
Merrill Lynch Life Insurance Company

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**REPRESENTATION OF PARTIES**

Theresa Dean Smith ("Claimant") was represented by E. Steve Watson, Esq., Dallas, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), and Jay D. Arbetter ("Arbetter") were represented by William J. Manning, Esq. of Merrill Lynch, Inc., New York, New York.

Merrill Lynch Life Insurance Company is not a member of the NASD and did not submit to arbitrate this claim.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 12, 2000. Submission Agreement of Claimant Theresa Dean Smith was signed on December 12, 2000.

Statement of Answer and Motion to Dismiss was filed by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on or about February 16, 2001. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on February 16, 2001 by William J. Manning, Jr. Statement of Answer was filed by Respondent Jay D. Arbetter on or about February 20, 2001. Submission Agreement of Respondent Jay D. Arbetter was signed on February 15, 2001.

Claimants Response to Motion to Dismiss was filed on or about February 24, 2001.

Respondents Merrill Lynch and Jay D. Arbetter submitted a Sur-Reply to the Motion to Dismiss on or about June 6, 2001.

### **CASE SUMMARY**

Claimant asserted the following causes of action: violation of the Texas Deceptive Trade Practices Act, negligence, breach of industry standards, breach of contract, breach of fiduciary duty, suitability, respondeat superior and failure to supervise. The causes of action relate to the accusation that Respondents Merrill Lynch and Jay D. Arbetter sold Claimant a "Single Premium Life Policy" and "Resource Sel. Annuity Policy" when she had specifically asked not to be invested in life insurance.

Respondents Merrill Lynch and Jay D. Arbetter denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief can be granted; Claimant is barred from recovery because she directly authorized, consented to, and ratified all transactions in the account; Claimant made all of the investment decisions in regards to this account and any losses which may have been suffered by Claimant, were caused by the investment decision made by Claimant and due to market conditions outside their control; Claims are barred by the statutes of limitations, laches, and Respondents deny liability to Claimant in any amount because at all times they had acted in good faith with regards to Claimant's accounts.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$95,311 in compensatory damages. In addition, Claimant had asked for an award that included, punitive damages, attorney's fees, arbitration costs and any other fees in conjunction with this case.

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

### **OTHER ISSUES CONSIDERED & DECIDED**

On June 22, 2001, a pre-hearing was held in regards to Respondents' Motion to Dismiss and Claimant's Response. A ruling granting the Motion to Dismiss was sent to the parties on or about July 28, 2001.

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 originals remain on file with NASD Dispute Resolution. ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the pre-hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitration panel has found that all claims brought by Theresa Dean Smith against Merrill Lynch and Jay D. Arbetter are hereby dismissed in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief, including punitive damages, 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 will retain the non-refundable filing fees for each claim:

Initial claim filing fee = \$225

#### **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 Pierce, Fenner & Smith, Inc.

Member surcharge	= \$1,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,500

### 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 arbitrators, 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 \$750 = \$1500

Pre-hearing conferences:	Date	
	5/17/2001	1 session
	6/22/2001	1 session

The Arbitration Panel has assessed \$750 of the forum fees to Theresa Dean Smith.

The Arbitration Panel has assessed \$750 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Jay D. Arbetter.

### Fee Summary

Claimant, Theresa Dean Smith, shall be and hereby is liable for:

Initial Filing Fee	= \$ 225
<u>Forum Fees</u>	<u>= \$ 750</u>
Total Fees	= \$ 975
<u>Less payments</u>	<u>= \$ 975</u>
Balance Due NASD Dispute Resolution.	= \$ 0

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

Member Fees	= \$ 3,100
Total Fees	= \$ 3,100
<u>Less payments</u>	<u>= \$ 3,100</u>
Balance Due NASD Dispute Resolution.	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Jay D. Arbetter, shall be jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$750</u>
Balance Due NASD Dispute Resolution.	= \$750

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Rollin W. King - Public Arbitrator, Presiding Chair  
Priscilla Kim Park, JD - Public Arbitrator  
Steven C. Thayer, Esq. - Industry Arbitrator

Concurring Arbitrators:

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Rollin W. King  
Public Arbitrator, Presiding Chair

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Signature Date

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Priscilla Kim Park, JD  
Public Arbitrator

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Signature Date

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Steven C. Thayer, Esq.  
Industry Arbitrator

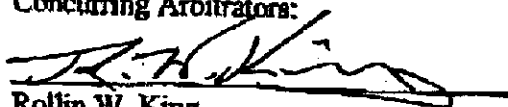
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Signature Date

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Steven C. Thayer, Esq. - Industry Arbitrator

Concurring Arbitrators:

  
Rollin W. King  
Public Arbitrator, Presiding Chair

8/14/02  
Signature Date

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Priscilla Kim Park, JD  
Public Arbitrator

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Steven C. Thayer, Esq.  
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*Steven C. Thayer*  
Steven C. Thayer, Esq.  
Industry Arbitrator

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*August 15, 2002*  
Signature Date