

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

West Caldwell Office Associates, LLC, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Christopher Killeen, (Respondents)

Case Number: 00-05729

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, West Caldwell Office Associates, LLC, hereinafter referred to as "Claimant": James J. Higgins, Esq., Law Office of James J. Higgins, Florham Park, NJ.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Christopher Killeen ("Killeen"), hereinafter collectively referred to as "Respondents": Edwin A. Zipf, Esq., Bressler, Amery & Ross, P.C., Morristown, NJ. Previously represented by: Marianne Bretton-Granatoor, Esq., Director & Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 22, 2000.

Claimant signed the Uniform Submission Agreement: December 21, 2000.

Joint Statement of Answer filed by Respondents on or about: April 5, 2001.

Merrill signed the Uniform Submission Agreement: February 14, 2001.

Killeen signed the Uniform Submission Agreement: April 6, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; gross negligence; failure to undertake reasonable due diligence; and failure to inform and educate employees concerning risk in investments. Claimant's claim involved the MuniHoldings New Jersey Insured Fund III, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state a claim upon which relief may be granted; Claimant suffered no damages by reason of the acts complained of in the Statement of Claim; Respondents are not liable to Claimant in any amount because, at all times relevant herein, Respondents acted properly and in good faith with respect to Claimant's account; pursuant to the terms of Claimant's customer agreement, all substantive claims raised by Claimant are to be determined under New York law; all transactions recommended to and made for or on behalf of Claimant were suitable for and in accordance with Claimant's stated investment objectives and financial condition; Claimant failed to mitigate its damages, if any; Claimant's claims are barred by the equitable doctrines of estoppel, laches, ratification, and waiver; Claimant failed to exercise due diligence, was reckless and/or was negligent in the supervision of their financial affairs, particularly the operation of the Merrill account at issue; all risks inherent in the investments at issue were fully disclosed to Claimant; any alleged losses which may have been incurred by Claimant were the direct result of adverse market conditions and/or the acts of the issuer of the securities at issue and cannot be attributed to Respondents; and Claimants are not entitled to an award of attorneys' fees, punitive damages, interest, or the costs of the instant proceeding.

RELIEF REQUESTED

Claimant requested:

- a. Rescission and restitution with repayment of its initial investment amount of \$477,750.00, plus interest at the T-Bill rate from December 29, 1998 to date of Award;
- b. Reimbursement of the filing fee and hearing costs; and
- c. An Award of attorneys' fees to make Claimant whole.

Respondents requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing in this matter, Respondents made a Motion to Dismiss. The Panel denied said Motion.

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 is solely liable for and shall pay to Claimant the sum of \$30,500.00 as compensatory damages.
2. All claims against Killeen are hereby dismissed in their entirety.
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	= \$ 300.00
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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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: August 17, 2001	1 session
May 9, 2002	1 session

Two (2) Hearing sessions x \$1125.00	= \$2,250.00
<u>Hearing Date:</u> September 18, 2002 <u>2 sessions</u>	
Total Forum Fees	= \$4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,250.00 of the forum fees against Merrill.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$2,550.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,125.00

2. Merrill is solely liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$6,850.00
<u>Less payments</u>	= \$7,100.00
Refund Due Merrill	= \$ 250.00

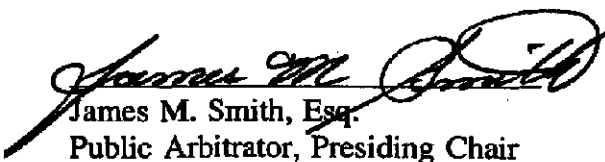
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James M. Smith, Esq.	-	Public Arbitrator, Presiding Chair
Arnold Limsky	-	Public Arbitrator
Larry W. Befeler	-	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.


James M. Smith, Esq.
Public Arbitrator, Presiding Chair

Oct. 7, 2002
Signature Date

Arnold Limsky
Public Arbitrator

Signature Date

Larry W. Befeler
Non-Public Arbitrator

Signature Date

October 18, 2002

Date of Service (For NASD Dispute Resolution use only)

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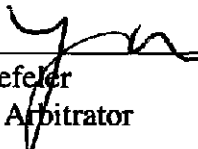
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Public Arbitrator, Presiding Chair

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Arnold Limsky
Public Arbitrator

Signature Date


Larry W. Befeler
Non-Public Arbitrator

10/7/02
Signature Date

October 18, 2002

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