

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

James and Shirley Bell, JTWROS, Claimants v. Merrill Lynch Pierce Fenner & Smith Inc.,
Patricia Gail Williams, Michael Delano Cheek, Respondents

Case Number: 01-01813

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

H. Thomas Fehn, Esq.
Fields, Fehn & Sherwin
Los Angeles, California

For Respondents:

Bryan I Reyhani, Esq.
Merrill Lynch Pierce Fenner & Smith Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: April 5, 2001

Claimants' Amended Statement of Claim filed: June 18, 2001

Claimants' Uniform Submission Agreements signed: June 18, 2001

Joint Statement of Answer filed by Respondents: June 7, 2001

Respondent, Michael Cheek's Uniform Submission Agreement signed: May 21, 2001

Respondent, Patricia Gail Williams' Uniform Submission Agreement signed: May 18, 2001

Respondent, Merrill Lynch Pierce Fenner & Smith Inc.'s Uniform Submission Agreement signed:
June 5, 2001

CASE SUMMARY

Claimants alleged breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, non-disclosures, unauthorized trading, manipulation, suitability, and stock loan in the trading of common stock in their brokerage account.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimant's original Statement of Claim requested \$75,000.00 in compensatory damages, and unspecified attorney's fees and costs.

Claimant's Amended Statement of Claim requested \$75,000.00 in compensatory damages, \$300,000.00 in punitive damages, \$25,000.00 in attorney's fees, and \$37,000.00 in costs.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On June 18, 2001, Claimants filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

All Parties and Arbitrators were present on November 12, 2003, the first date of the rescheduled hearing dates. However, since Claimants had inadvertently failed to serve the Amended Statement of Claim on the Respondents, the panel ordered the hearing postponed.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Merrill Lynch Pierce Fenner & Smith Inc., and Michael Delano Cheek are liable to and shall pay Claimants the sum of \$25,237.11 in compensatory damages.
- 2) Respondent Patricia Gail Williams is dismissed with prejudice.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch Pierce Fenner & Smith Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 4,100.00

Adjournment Fees

The following adjournment fees are assessed:

- 1) August 1-2, 2002, assessed jointly and severally to Respondents
Merrill Lynch Pierce Fenner & Smith Inc & Michael Delano Cheek = \$ 750.00
- 2) November 13-14, 2002, assessed 50% jointly and severally to Claimant
and 50% jointly and severally to Respondents Merrill Lynch Pierce
Fenner & Smith Inc & Michael Delano Cheek = \$ 750.00

Forum Fees and Assessments

The Arbitrator/Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Three (3) Hearing sessions @ \$1,125.00/session	= \$ 3,375.00
Hearings:	
November 12, 2002	1 session
February 27, 2003	2 sessions

Total Forum Fees	= \$ 3,375.00
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1. The Panel assessed \$ 1,687.50 of the forum fees jointly and severally to Claimants James and Shirley Bell, JTWROS.

2. The Panel assessed \$ 1,687.50 of the forum fees jointly and severally to Respondents Merrill Lynch Pierce Fenner & Smith Inc. and Michael Delano Cheek.

Fee Summary

1. Claimants, James and Shirley Bell, JTWROS, are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 375.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 2,287.50
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 862.50

2. Respondent, Merrill Lynch Pierce Fenner & Smith Inc., is charged with the following fees and costs:

Member Fees	= \$ 4,100.00
Total Fees	= \$ 4,100.00
Less payments	= \$(3,100.00)
Balance Due NASD Dispute Resolution	= \$ 1,000.00

3. Respondents, Merrill Lynch Pierce Fenner & Smith Inc. and Michael Delano Cheek, are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 2,812.50
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 2,812.50

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

ARBITRATION PANEL

<i>Robert J. Kilpatrick, JD</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>G. Timothy Haight, DBA</i>	-	<i>Public Arbitrator</i>
<i>Kenneth I. Rosenblum</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



ROBERT J. KILPATRICK, JD
Chair, Public Arbitrator

3-3-03
Signature Date

G. TIMOTHY HAIGHT, DBA
Public Arbitrator

Signature Date

KENNETH I. ROSENBLUM
Non-Public Arbitrator

Signature Date

3/3/3
Date of Service

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

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Signature Date

G. Timothy Haight
G. TIMOTHY HAIGHT, DBA
Public Arbitrator

3/03/03
Signature Date

KENNETH I. ROSENBLUM
Non-Public Arbitrator

Signature Date

3/3/3
Date of Service

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