

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Dorothy W. Bayley Revocable Trust

and

01-02780
Phoenix, Arizona

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

REPRESENTATION OF PARTIES

Dorothy W. Bayley Revocable Trust ("**Claimant**") was represented by Robert D. Mitchell, Esq., Mitchell Law Offices, P.C., Phoenix, Arizona.

Merrill Lynch Pierce Fenner & Smith Inc. ("**Respondent**") was represented by Todd D. Brody, Esq., Morgan, Lewis & Bockius LLP, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 29, 2001. Submission Agreement of Claimant Dorothy W. Bayley Revocable Trust was signed on May 11, 2001 by Rita T. Jones, Trustee.

Statement of Answer, Counter-Statement of Facts, and Affirmative Defenses was filed by Respondent Merrill Lynch Pierce Fenner & Smith Inc. on or about December 18, 2001. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith Inc. was signed on August 14, 2001 by Arthur Sobel.

CASE SUMMARY

Claimant submitted the following summary:

The Claimant Dorothy W. Bayley Revocable Trust alleged that the Respondent Merrill Lynch was negligent, breached its fiduciary duty, and violated other applicable statutory and common law by (i) accepting and permitting use of a defective power of attorney document over the Claimant's trust account, (ii) failing to properly supervise and monitor the Claimant's account with Merrill Lynch between July of 1999 and March of 2000, during which time period a purported power-of-attorney was held by Harold Kirby, a son-in-law to Dorothy Bayley; (iii) failing to accurately and fully apprise client of applicable risks associated with

activity in the account; (iv) not supervising the account for suitability and conformance of activity in account with prior history and information on file regarding investment objectives; (v) failing to duty to know customer and otherwise discharge statutory and common law duties to client in connection with mishandling of trust account; and (vi) failing to take reasonable actions to protect a vulnerable, elderly long-term client of the firm.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that this dispute is between the children of Dorothy Bayley who are fighting over their mother's assets and possessions. It was further stated that Rita Jones, the present Trustee and one of Mrs. Bayley's daughters, believes that her brother-in-law, Harold S. Kirby made unwise investment decisions for her mother's account when he held a power of attorney over the account.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of compensatory damages in the amount of \$500,000, interest, fees, costs and attorneys' fees. In addition, Claimant requested an award of punitive damages in the amount of \$250,000. At the hearing, Claimant sought recovery of its account losses totaling \$595,044, improper trust distributions not authorized by the purported power of attorney of at least \$300,000, the excess taxes paid as a result of said distributions totaling \$138,186, pre- and post-award interest at 10% per annum totaling \$173,554, arbitration related costs of \$20,000, plus attorney's fees equal to 35% of the Claimant's award, plus exemplary damages.

Respondent requested an award dismissing the Statement of Claim in its entirety, a judgment in its favor against Claimant granting it the expenses incurred in defending this action, including attorneys' fees, and all other relief deemed equitable and just.

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 (the "NASD").

AWARD

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

1. Respondent Merrill Lynch Pierce Fenner & Smith Inc. shall be and hereby is liable for and shall pay to Claimant Dorothy W. Bayley Revocable Trust the sum of \$117,000.00 (**One Hundred Seventeen Thousand Dollars and no Cents**) as compensatory damages.

2. Interest at the rate of 10% per annum is awarded on the above stated sum from and inclusive of May 23, 2001 through and inclusive of February 5, 2003.
3. Respondent Merrill Lynch Pierce Fenner & Smith Inc. shall be and hereby is liable for and shall pay to Claimant Dorothy W. Bayley Revocable Trust the sum of \$10,000.00 (**Ten Thousand Dollars and no Cents**) as costs.
4. 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.
5. 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 or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$375.00

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 Merrill Lynch Pierce Fenner & Smith Inc.

Member surcharge = \$2,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$4,500.00

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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session(s) with Panel x \$1,200.00 = \$2,400.00

Pre-hearing conference(s): August 5, 2002 1 session
December 10, 2002 1 session

Five (5) Hearing sessions x \$1,200.00 = \$6,000.00

Hearing Date(s):	February 3, 2003	2 sessions
	February 4, 2003	2 sessions
	<u>February 5, 2003</u>	<u>1 session</u>

Total Forum Fees	= \$8,400.00
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The Arbitration Panel has assessed \$4,200.00 of the forum fees to Dorothy W. Bayley Revocable Trust.

The Arbitration Panel has assessed \$4,200.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith Inc.

Fee Summary

Claimant, Dorothy W. Bayley Revocable Trust, shall be and hereby is liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$4,200.00
Total Fees	= \$4,575.00
<u>Less payments</u>	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$3,000.00

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

Member Fees	= \$ 7,100.00
<u>Forum Fees</u>	= \$ 4,200.00
Total Fees	= \$11,300.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 6,700.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Warren C. Kotzmann, Esq. - Public Arbitrator, Presiding Chair
Patricia Ann Loan - Public Arbitrator
Bruce A. Lindvig - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Warren C. Kotzmann

Warren C. Kotzmann, Esq.
Public Arbitrator, Presiding Chair

February 19, 2003

Signature Date

/s/ Patricia Ann Loan

Patricia Ann Loan
Public Arbitrator

February 20, 2003

Signature Date

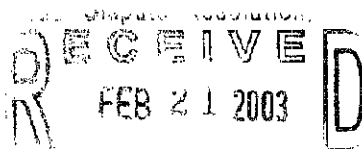
/s/ Bruce A. Lindvig

Bruce A. Lindvig
Non-Public Arbitrator

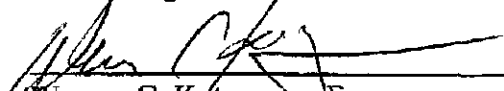
February 19, 2003

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-02780
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Concurring Arbitrators:


Warren C. Ketzmann, Esq.
Public Arbitrator, Presiding Chair

2/19/03
Signature Date

Patricia Ann Loan
Public Arbitrator

Signature Date

Bruce A. Lindvig
Non-Public Arbitrator

Signature Date

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Public Arbitrator

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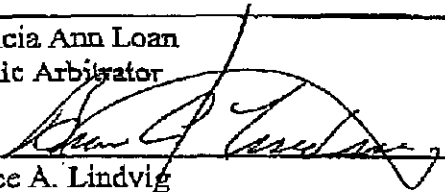
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Public Arbitrator, Presiding Chair

Signature Date

Patricia Ann Loan
Public Arbitrator

Signature Date



Bruce A. Lindvig
Non-Public Arbitrator

Signature Date

2/19/03