

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Albert and Elise Baker,

Claimants,

And

Merrill Lynch Pierce Fenner & Smith, Inc,
Kirk J. Gill and John Simonson,

02-01108
Phoenix, Arizona

Respondents

REPRESENTATION OF PARTIES

Albert and Elise Baker were represented by David C. Anson, Esq. of Anson, Lammers and Barkley, Tucson, Arizona.

Merrill Lynch Pierce Fenner & Smith, Inc. was represented by Todd D. Brody, Esq. of Morgan Lewis & Bockius LLP, New York, New York.

Kirk J. Gill and John Simonson were represented by Armand Salese, Esq., Salese & McCarthy, P.C., Tucson, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about February 19, 2002. Submission Agreement of Claimants Albert and Elise Baker were signed on the same date.

A Statement of Answer, Counter-Statement of Facts and Affirmative Defenses was filed by Respondent Merrill Lynch Pierce Fenner and Smith, Inc. (hereinafter "Merrill Lynch") and Respondents Kirk J. Gill and John Simonson was filed on or about April 26, 2002, along with a Submission Agreement.

CASE SUMMARY

Claimants alleged that Respondent Merrill Lynch failed to supervise the activities of Respondents Gill and Simonson and that Respondents Gill and Simonson engaged in unsuitable investments and trading strategies, unnecessary trading of bonds, negligence and failure to exercise fiduciary responsibility.

Unless specifically admitted, in their Statements of Answer/Responses, all Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested in their Statement of Claim compensatory damages in the amount of \$295,076.00 and punitive damages in the amount of \$200,000.00, plus attorney's fees and costs.

Respondent Merrill Lynch requested that Claimants' Statement of Claim be dismissed in its entirety and it be awarded attorney's fees.

Respondents Gill and Simonson requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Gill and Simonson filed Motions for Summary Judgment that were denied by the Panel.

After the first session of the arbitration, on January 10, 2003, the Claimants acknowledged to the Panel that they suffered no losses in their Merrill Lynch accounts while managed by Respondents Kirk J. Gill and John Simonson. Claimants further acknowledged to the arbitrators that Respondents Kirk J. Gill and John Simonson handled their Merrill Lynch accounts properly and appropriately and engaged in no wrongdoing in their management of Claimants' accounts. The Claimants requested the Panel to enter an Order expunging any mention of their claims from Respondent Kirk J. Gill and John Simonson's CRD records.

Based upon the Claimants' acknowledgment aforesated and good cause appearing, the Panel finds as follows:

1. Claimants suffered no losses in their accounts at Merrill Lynch while managed by Respondents Kirk J. Gill and John Simonson.
2. Respondents Kirk J. Gill and John Simonson's handling of the Claimants' accounts was proper and appropriate and Kirk J. Gill and John Simonson engaged in no wrongdoing in their management of the Claimants' Merrill Lynch accounts.

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 Affidavit of the Claimant, the Stipulation of the Parties, and proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Gill and Simonson are dismissed from this matter, with prejudice.
2. Claimants suffered no losses in their accounts at Merrill Lynch while managed by Respondents Kirk J. Gill and John Simonson.
3. Respondents Kirk J. Gill and John Simonson's handling of the Claimants' accounts was proper and appropriate and Kirk J. Gill and John Simonson engaged in no wrongdoing in their management of the Claimants' Merrill Lynch accounts,
4. The Panel recommends the expungement of all references in the above-captioned arbitration from Respondents Kirk J. Gill and John Simonson's records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54 Respondents Gill and Simonson must obtain confirmation from a Court of competent jurisdiction before the CRD will execute the expungement directive.

FEES

Pursuant to the NASD Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received the non-refundable filing for each claim as follows:

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(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 = \$1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,750.00

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:

2	Pre-hearing session(s) with Panel	x	1,125.00	\$	2,250.00
	September 19, 2002	1	session		
	September 25, 2002				
3	Hearing sessions	x	1,125.00	\$	3,375.00
	January 6, 2003	2	sessions		
	January 7, 2003	1	sessions		
	Total Forum Fees			\$	<u>5,625.00</u>

The Arbitration Panel has assessed \$0.00 of the forum fees to Albert and Elise Baker.

The Arbitration Panel has assessed \$5,625.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

The Arbitration Panel has assessed \$0.00 of the forum fees to Kirk J. Gill.

The Arbitration Panel has assessed \$0.00 of the forum fees to John Simonson.

Fee Summary

Claimants, Albert and Elise Baker, shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,800.00
Balance to be refunded by NASD Dispute Resolution	= \$1,500.00

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


Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,625.00
Total Fees	= \$10,825.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

All balances are due to NASD Dispute Resolution

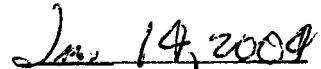
ARBITRATION PANEL

Samuel L. McClaren - Public Arbitrator, Presiding Chair
Edward Allan Hindman - Industry Arbitrator
Michael E. Duckworth - Public Arbitrator

Concurring Arbitrators:



Samuel L. McClaren
Public Arbitrator, Presiding Chair



Signature Date

Michael E. Duckworth
Public Arbitrator

Signature Date

Edward Allan Hindman
Non-Public Arbitrator

Signature Date

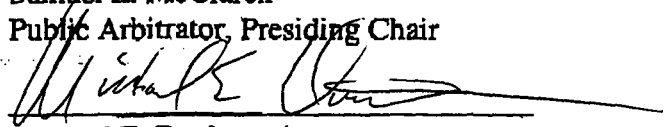
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Concurring Arbitrators:

Samuel L. McClaren
Public Arbitrator, Presiding Chair

Signature Date


Michael E. Duckworth
Public Arbitrator

2/18/2004
Signature Date

Edward Allan Hindman
Non-Public Arbitrator

Signature Date

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Michael E. Duckworth - Public Arbitrator

Concurring Arbitrators:

Samuel L. McClaren
Public Arbitrator, Presiding Chair

Signature Date

Michael E. Duckworth
Public Arbitrator

Signature Date

Edward Allan Hindman
Edward Allan Hindman
Non-Public Arbitrator

2/19/04
Signature Date