

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimants

Karen Ann Warner and
Karen Ann Warner Living Trust

and

Case Number: 02-04613
Hearing Site: Detroit, Michigan

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
David Boor and Dennis Gabel

NATURE OF CASE

Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

Karen Ann Warner and Karen Ann Warner Living Trust ("Claimants") were represented by Mark L. Kowalsky, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"), David Boor ("Boor"), and Dennis Gabel ("Gabel"), hereinafter collectively referred to as "Respondents," were represented by Leland Barringer, Esq. and W. Scott Turnball, Esq., Miller Canfield, Paddock and Stone, PLC, Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about August 6, 2002. The Submission Agreement of Karen Ann Warner was signed on or about August 1, 2002. The Submission Agreement of Karen Ann Warner Living Trust was signed on or about August 1, 2002, by Karen Ann Warner, TTEE.

The Statement of Answer was filed by MLPFS on or about November 18, 2002.

Respondents filed a Motion to Dismiss or in the Alternative, for a More Definite Statement of Claim on or about November 18, 2002. Claimants filed a Response to the Motion on or about December 24, 2002. Claimants filed a Supplemental Response to Respondent's Motion on or about June 6, 2003.

CASE SUMMARY

Claimants asserted the following legal theories in support of her claim: unsuitable recommendations, breach of fiduciary duty, misrepresentation and violation of state and federal securities laws. The causes of action related to investments in annuities, limited partnerships and municipal bond funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief may be granted; Claimants have failed to plead their allegations with sufficient specificity; and the Statement of Claim is barred by the doctrines of waiver, laches, estoppel, and unclean hands.

RELIEF REQUESTED

Claimants requested an award in the amount of approximately \$3,000,000 plus punitive and exemplary damages, interest, attorneys' fees, costs and such other relief as may be determined.

Respondents requested that the claims asserted against them be dismissed in their entirety that they be awarded their costs and attorneys' fees, and that references to this matter be expunged from Respondents Boor's and Gabel's CRD Records.

OTHER ISSUES CONSIDERED & DECIDED

Respondents did not file with NASD Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, are bound by the determination of the arbitration panel on all issues submitted.

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 NASD Dispute Resolution (the "NASD").

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimants' claims, having been withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each

bear their own costs and expenses incurred in this matter;

- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondents David Boor's and Dennis Gabel's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent David Boor must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby dismissed with prejudice.

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 = \$ 500.00

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	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

October 13-16, 2003, adjournment requested by Respondents	= \$ 1,200.00
April 26-29, 2004, adjournment requested jointly	= \$ 1,200.00
January 10-12, 2005, adjournment to mediate requested jointly	= \$ 1,500.00
July 11-15, 2005, adjournment requested by Respondents (fee waived by Panel)	= \$ 1,500.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

The parties advised NASD of the settlement on September 2, 2005.

The hearings were scheduled for September 7-9, 2005 = \$ 300.00

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:

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: March 24, 2003 1 session

Total Forum Fees = \$ 1,200.00

The Arbitration Panel has assessed \$600.00 of the forum fees jointly and severally to Karen Ann Warner and Karen Ann Warner Living Trust.

The Arbitration Panel has assessed \$600.00 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., David Boor, and Dennis Gabel.

Pursuant to Rule 10332(f), the NASD shall retain Claimants' hearing session deposit.

FEE SUMMARY

Claimants, Karen Ann Warner and Karen Ann Warner Living Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fees	= \$ 1,350.00
Retention of Hearing Session deposit	= \$ 600.00
Forum Fees	= \$ 600.00
<u>Total Fees</u>	<u>= \$ 3,050.00</u>
<u>Less payments</u>	<u>= \$ 3,050.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 8,550.00
Three-Day Cancellation Fees	= \$ 300.00
Total Fees	= \$ 8,850.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 300.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., David Boor, and Dennis Gabel, are jointly and severally liable for:

Adjournment Fees	= \$ 2,550.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 3,150.00
Less payments	= \$ 3,150.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

William P. Thorpe, Esq. - Public Arbitrator, Presiding Chair
D. Michael Kratchman, Esq. - Public Arbitrator
Diane C. Tietmeyer - Non-Public Arbitrator

Concurring Arbitrators:

/s/ William P. Thorpe, Esq.
William P. Thorpe, Esq.
Public Arbitrator, Presiding Chair

02/01/2006
Signature Date

/s/ D. Michael Kratchman, Esq.
D. Michael Kratchman, Esq.
Public Arbitrator

02/06/06
Signature Date

/s/ Diane C. Tietmeyer
Diane C. Tietmeyer
Non-Public Arbitrator

02/01/2006
Signature Date

02/06/06
Date of Service (For NASD office use only)

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

Member Fees	= \$ 8,850.00
<u>Three-Day Cancellation Fees</u>	= \$ 300.00
Total Fees	= \$ 8,850.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 300.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., David Boor, and Dennis Gabel, are jointly and severally liable for:

Adjournment Fees	= \$ 2,550.00
<u>Forum Fees</u>	= \$ 500.00
Total Fees	= \$ 3,150.00
<u>Less payments</u>	= \$ 3,150.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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D. Michael Kratchman, Esq. - Public Arbitrator
Diane C. Tietmeyer - Non-Public Arbitrator

Concurring Arbitrators:

William P. Thorpe, Esq.
Public Arbitrator, Presiding Chair


D. Michael Kratchman, Esq.
Public Arbitrator

Signature Date

2/6/06
Signature Date

Diane C. Tietmeyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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

Member Fees	= \$ 8,550.00
<u>Three-Day Cancellation Fees</u>	= \$ 300.00
Total Fees	= \$ 8,850.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 300.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., David Boor, and Dennis Gabel, are jointly and severally liable for:


Adjournment Fees	= \$ 2,550.00
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Concurring Arbitrators:



William P. Thorpe, Esq.
Public Arbitrator, Presiding Chair

Feb 1, 2008

Signature Date

D. Michael Kratchman, Esq.
Public Arbitrator

Signature Date

Diane C. Tietmeyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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

Member Fees	= \$ 8,550.00
Three-Day Cancellation Fees	= \$ 300.00
Total Fees	= \$ 8,850.00
Less payments	= \$ 8,650.00
Balance Due NASD Dispute Resolution	= \$ 300.00

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Adjournment Fees	= \$ 2,550.00
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Public Arbitrator, Presiding Chair

Signature Date

D. Michael Kratchman, Esq.
Public Arbitrator

Signature Date


Diane C. Tietmeyer
Non-Public Arbitrator

2/1/06
Signature Date

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