

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Thomas J. Ridolfi and Patrick M. Ridolfi as Trustees of The Scott Trust, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

Case Number: 02-04629

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

David B. Nemer, Jr., Esq.
San Francisco, California

For Respondent:

Cara L. Meredith
Keesal, Young & Logan
San Francisco, California

*TO
NEW
YORK!
6/4/03*

CASE INFORMATION

Statement of Claim filed: August 2, 2002

Claimant's Hearing Brief filed: May 19, 2003

Claimant's Uniform Submission Agreement signed: June 21, 2002

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): October 23, 2002

Respondent's Motion to Dismiss filed: May 15, 2003

CASE SUMMARY

Claimant alleged that Respondent engaged in improper conduct by not distributing to Thomas J. and Patrick M. Ridolfi, the funds in the Individual Retirement Account No. 388-16N36 ("TRA").

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages of approximately \$6,822.00 plus interest.

Respondent requested dismissal of Claimant's Statement of Claim with prejudice and requested that the parties bear their respective attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Merrill Lynch did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On October 5, 2002, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 28, 2002, Respondent Merrill Lynch's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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) Respondent's Motion to Dismiss is denied.
- 2) The issues of distribution of IRA proceeds and the diminution in value of the IRA, were rendered moot by stipulation of the parties, since the IRA was re-valued as of December 30, 2000, when it was distributed on October 30, 2002.
- 3) Respondent acted unreasonably in delaying the distribution of the IRA proceeds, requiring Claimant to retain counsel to prosecute this NASD-DR action. Accordingly and pursuant to California Probate Code Section 13105(b), Respondent is liable for and shall pay to Claimant \$10,078.75 as and for attorney's fees, which are deemed to be reasonable. In addition, Respondent is liable for and shall pay to Claimant the sum of \$75.00 representing Claimant's filing fee.
- 4) Claimant's request for interest is denied.
- 5) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 75.00

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. Accordingly, Merrill Lynch is a party and the following fees are assessed:

Member Surcharge = \$325.00

Total Member Fees = \$325.00

Adjournment Fees

The following adjournment fees are assessed:

April 21-22, 2003, requested by Merrill Lynch = \$250.00

Forum Fees and Assessments

The 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/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with a single arbitrator @ \$250.00/session = \$500.00

Pre-hearing conferences: January 7, 2003 1 session

April 14, 2003 1 session

(1) Hearing session @ \$250.00/session = \$250.00

Hearing: May 19, 2003 1 session

Total Forum Fees = \$750.00

The Panel assessed the \$750.00 in forum fees to Respondent Merrill Lynch.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 75.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 75.00
<u>Less Payments</u>	= \$ (325.00)
Refund Due Claimant	= \$ (250.00)

2. Respondent, Merrill Lynch, is charged with the following fees and costs:

Member Fees	= \$ 325.00
Adjournment Fee	= \$ 250.00
Forum Fees	= \$ 750.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$1325.00
<u>Less Payments</u>	= \$ (650.00)
Balance Due NASD-DR	= \$ 675.00

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

ARBITRATION PANEL

John J. George

Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature

John J. George
Chair, Public Arbitrator

Signature Date

Date of Service

The parties did not incur administrative costs.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 75.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 75.00
<u>Less Payments</u>	= \$ (325.00)
Refund Due Claimant	= \$ (250.00)

2. Respondent, Merrill Lynch, is charged with the following fees and costs:

Member Fees	= \$ 325.00
Adjournment Fee	= \$ 250.00
Forum Fees	= \$ 750.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$1325.00
<u>Less Payments</u>	= \$ (650.00)
Balance Due NASD-DR	= \$ 675.00

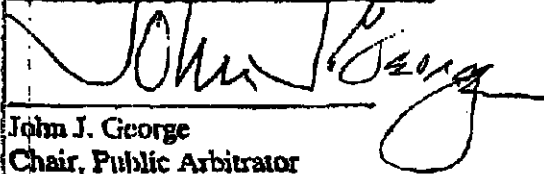
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ARBITRATION PANEL

John J. George

Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature



John J. George
Chair, Public Arbitrator

JUN 04 2003

Signature Date

6/5/03
Date of Service