

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Suzette Telatnyk

Case Number: 02-05099

Name of the Respondents  
Merrill Lynch Pierce Fenner & Smith, Inc.;  
UBS Financial Services Inc.;  
Eric C. Edson; and,  
David B. White

Hearing Site: Dallas, Texas

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**REPRESENTATION OF PARTIES**

Claimant Suzette Telatnyk, hereinafter referred to as "Claimant": Janet M. Richmond, of the Loss Recovery Center, located in Incline Village, Nevada.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"): John P. Kincade, Esq. of the firm of Winstead Sechrist & Minick, located in Dallas, Texas.

Respondents UBS Financial Services Inc. ("UBS"), Eric C. Edson ("Edson") and David B. White ("White"), hereinafter collectively referred to as "UBS Respondents": Charles M. Schwartz, Esq. and Kelley M. Keller, Esq. of Skadden, Arps, Slate, Meagher & Flom LLP, located in Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed: August 29, 2002.

Claimant signed the Uniform Submission Agreement: September 6, 2002.

Claimant's Arbitration Brief filed: July 30, 2003.

Statement of Answer filed by Respondent MLPFS: November 25, 2002

Respondent MLPFS signed the Uniform Submission Agreement: October 5, 2002.

Respondent MLPFS's Hearing Memorandum filed: July 30, 2003.

Joint Statement of Answer filed by Respondent UBS, Edson and White: November 22, 2002.

Respondent UBS signed the Uniform Submission Agreement: November 8, 2002.

Respondent Edson signed the Uniform Submission Agreement: November 11, 2002.

Respondent White signed the Uniform Submission Agreement: November 8, 2002.

### CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; unauthorized discretionary trading; negligence; breach of fiduciary duty; failure to supervise; and violation of NASD, NYSE, and federal and state securities laws, rules and regulations. These causes of action resulted from Respondents' recommending and performing transactions in aggressive mutual funds and speculative stocks.

Unless specifically admitted in its Answer, Respondent MLPFS denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. The Statement of Claim fails to particularize facts establishing a legal theory under which MLPFS could be held liable for any damages;
3. Claimant is barred from any recovery because she instructed, directed, authorized, consented to, acquiesced in, and/or ratified all transactions in her accounts while at MLPFS. Legal principles of waiver and estoppel also bar Claimant's claims;
4. Any monetary "loses" Claimant allegedly suffered were caused by the investment decisions she made and/or due to historical, market, and/or economic conditions that were beyond the control of MLPFS;
5. MLPFS is not liable to Claimant because, at all times relevant herein, MLPFS acted properly, in good faith, and in a commercially reasonable manner with respect to Claimant's account;
6. Claimant failed to mitigate her alleged damages, if any, and failed to exercise the degree of diligence required in the handling of her investments;
7. Claimant's claims are barred in whole or in part by reason of her contributory and/or comparative negligence;
8. MLPFS is not liable to Claimant for negligent supervision. MLPFS had established procedures, and a system for applying those procedures, that were designed reasonably to prevent and detect the alleged violations at issue in this case. Furthermore, MLPFS reasonably discharged its duties and obligations under the applicable supervisory regulations and procedures, without any reasonable cause to believe that its procedures and systems were allegedly not being followed. Furthermore, no private cause of action exists based upon a brokerage firm's alleged failure to comply with supervisory rules. Thus, a firm's alleged failure to follow supervisory requirements does not give rise to a former customer's cause of action against the firm;
9. Claimant is barred from recovery because she was apprised of the nature, objectives and risk of her investments, and all facts material to her investment decisions; and,
10. Claimant's claims are barred by the applicable statute of limitations.

Unless specifically admitted in its Answer, Respondent UBS, Edson and White denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's claims are barred by the doctrines of ratification, waiver and estoppel;
2. Claimant has failed to mitigate her damages;
3. Claimant has failed to state a claim upon which relief can be granted;
4. Claimant knowingly assumed the costs and risks associated with her investments and was capable of assuming those risks;
5. The damages that Claimant allegedly suffered have no causal relationship to any act committed by, or legally attributable to, UBS, Edson or White; and,
6. To the extent Claimant's losses were caused by her own proportionate responsibility or negligence, her claims are barred in whole or in part.

**RELIEF REQUESTED**

Claimant Suzette Telatnyk requested:

Compensatory Damages	\$365,000.00
Punitive Damages	Sufficient to punish Respondents
Interest	At highest legal rate
Attorneys' Fees	Unspecified amount
Other Costs	Including consulting fees
Other Monetary/Non-Monetary Relief if any:	Disgorging Respondents' commissions and other compensation in an amount to be determined at hearing

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested:

1. Claimant's Statement of Claim be dismissed with prejudice;
2. Claimant take nothing;
3. MLPFS be awarded its reasonable and necessary attorneys' fees and costs; and,
4. All other relief to which it is entitled.

Respondents UBS Financial Services Inc., Eric C. Edson and David B. White requested that the Panel enter a take-nothing judgment in their favor and to award them their recoverable costs of arbitration.

**OTHER ISSUES CONSIDERED AND DECIDED**

Immediately prior to hearing, Claimant and Respondent MLPFS settled their claims against each other. Therefore, the Panel did not rule on any of these claims and the claims are dismissed with prejudice by this award.

At the conclusion of the Claimant's case, Respondents UBS, Edson and White presented a Motion to Dismiss. After hearing argument, the Panel denied the Motion.

### **AWARD**

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

1. Respondents UBS Financial Services Inc., Eric C. Edson and David B. White are jointly and severally liable for and shall pay to the Claimant, Suzette Telatnyk, the sum of \$64,500.00 as compensatory damages;
2. Furthermore, Respondents UBS Financial Services Inc., Eric C. Edson and David B. White are jointly and severally liable for and shall pay to the Claimant, Suzette Telatnyk, the sum of \$300.00 as reimbursement of the non-refundable claim filing fee;
3. The claims against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed with prejudice;
4. The parties shall bear their remaining costs of arbitration, including any additional attorneys' fees, except for those sums specifically awarded herein; and
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. and UBS Financial Services Inc. are a party to this arbitration and each are assessed the following member fees:

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 11, 2003 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: April 11, 2003 1 session	
Six (6) Hearing sessions @ \$1,125.00	= \$ 6,750.00
Hearing Dates: August 19, 2003 2 sessions	
August 20, 2003 2 sessions	
August 21, 2003 2 sessions	
Total Forum Fees	= \$ 8,325.00

The Panel has assessed \$8,325.00 of the forum fees, jointly and severally, to Respondents UBS Financial Services Inc., Eric C. Edson and David B. White.

**FEES SUMMARY**

Claimant Suzette Telatnyk is solely liable for:

Initial Filing Fee	= \$ 300.00
Less payments	= \$ 1,425.00
Refund from NASD Dispute Resolution	= \$ 1,125.00

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

Member Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent UBS Financial Services Inc. is solely liable for:

Member Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents UBS Financial Services Inc., Eric C. Edson and David B. White are jointly and severally liable for:

Forum Fees	= \$ 8,325.00
Less payments	= \$ 2,750.00
Balance Due NASD Dispute Resolution	= \$ 5,575.00

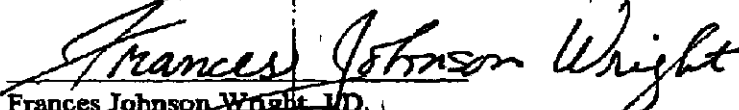
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Frances Johnson Wright, J.D. - Public Arbitrator, Presiding Chairperson  
Patricia B. Lehtola, Esq. - Public Arbitrator  
William Cavalier - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Frances Johnson Wright, J.D.  
Public Arbitrator, Presiding Chairperson

  
Signature Date

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Patricia B. Lehtola, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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William Cavalier  
Non-Public Arbitrator

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9/25/03  
Date of Service (For NASD Dispute Resolution office use only)

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Signature Date

*William Cavalier*  
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William Cavalier  
Non-Public Arbitrator

*9/22/03*  
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Signature Date

*9/25/03* *Non*  
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Date of Service (For NASD Dispute Resolution office use only)