

**STIPULATED AWARD  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

Names of Claimants

Way and Taune Johnston

and

Case Number: 02-05178  
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc., and  
Scott D. Lile

---

**NATURE OF CASE**

Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Way and Taune Johnston ("Claimants") were represented by David P. Andis, Esq., Gauntt & Kruppstadt L.L.P., Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc., ("Merrill Lynch") and Scott D. Lile ("Lile"), hereinafter collectively referred to as "Respondents" were represented by Jack D. Ballard Esq., The Ballard Law Firm, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 3, 2002. The Submission Agreement of Claimants was signed on or about July 30, 2002.

Respondents, Merrill Lynch and Lile, jointly filed a Statement of Answer on or about October 30, 2002.

The Submission Agreement of Respondent, Merrill Lynch, was signed on or about September 27, 2002.

The Submission Agreement of Respondent, Lile, was signed on or about October 7, 2002.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to supervise, negligence, unauthorized trading, suitability, misrepresentations, churning, omission of facts, breach of contract and breach of fiduciary duty. The causes of action related to Claimants'

allegations that Respondents aggressively advised, recommended, persuaded and induced them to redeem their Series EE Savings Bonds and to invest the yield into the purchase or acquisition of certain Consults accounts which greatly and substantially increased Respondent Lile's commissions. Claimants alleged that as a result of redeeming the Series EE Savings Bonds and investing the yield in certain Consults accounts recommended and approved by Respondents, Claimants incurred substantial and significant tax liabilities. Claimants further asserted that at no time did Merrill Lynch or Lile advise or inform them of the tax consequences.

Unless specifically admitted in their Answer, Respondents, Merrill Lynch and Lile, denied the allegations made in the Statement of Claim and asserted affirmative defenses, including the following:

1. The damages sustained by Claimants were a result of market forces or their own negligence, rather than any act or omission on the part of Respondents.
2. Claimants are estopped by their conduct, from complaining about the transactions in their accounts at Merrill Lynch.
3. Claimants knew of the risks associated with the transactions at Merrill Lynch and willingly assumed those risks at the time the transactions were made.
4. Claimants also failed to timely complain about any of the transactions and never accused Merrill Lynch or its representatives of any misrepresentation, omission, or inappropriate conduct until after the losses in the investments were sustained.
5. Claimants, through their conduct, ratified the investments made in the accounts at Merrill Lynch or alternatively, waived their right to complain about them.
6. Claimants failed to mitigate their damages.

#### **RELIEF REQUESTED**

Claimants requested an award of approximately \$454,812.00 in compensatory damages, \$500,000.00 in punitive damages, plus interest, costs, attorneys fees and any other relief the panel deemed appropriate.

Respondents requested that the claims asserted against them be dismissed with prejudice and that they be awarded reimbursement of all legal fees, costs and expenses, and expungement of all references of this arbitration from Respondent Lile's permanent registration records maintained by the NASD Central Registration Depository (CRD).

#### **OTHER ISSUES CONSIDERED & DECIDED**

This case settled and Claimants, Way and Taune Johnston, and Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile, have executed a Settlement Agreement and Release.

This Stipulated Award was prepared, in part, based on a proposed award document submitted by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile.

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 originals remain on file with the 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 against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile are hereby dismissed in their entirety with prejudice pursuant to the parties' Settlement Agreement;
- 2.) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Scott D. Lile registration's records maintained by the NASD Central Registration Depository ("CRD") with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Scott D. Lile must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) Other than Forum Fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter, and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied 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 = \$ 375.00

#### **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	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel	x \$ 1,200.00	= \$1,200.00
Pre-hearing Conference: March 11, 2003	1 session	
Total Forum Fees		= \$1,200.00

The Arbitration Panel has assessed \$600.00 of the forum fees jointly and severally to Claimants Way & Taune Johnston.

The Arbitration Panel has assessed \$600.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile

#### **Fee Summary**

Claimants, Way and Taune Johnston are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
NASD Retained Hearing Session Deposit pursuant to 10332(g)	= \$ 600.00
Forum Fees	= \$ 600.00
Total Fees	= \$1,575.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
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**

Ann I. Miller – Non-Public Arbitrator, Presiding Chair  
Pamela B. Houck - Public Arbitrator  
Larry J. Craddock – Public Arbitrator

Concurring Arbitrators:

/s/ Ann I. Miller  
Ann I. Miller  
Non-Public Arbitrator, Presiding Chairperson

August 20, 2004  
Signature Date

/s/ Pamela B. Houck  
Pamela B. Houck  
Public Arbitrator

August 20, 2004  
Signature Date

/s/ Larry J. Craddock, J.D.  
Larry J. Craddock, J.D.  
Public Arbitrator

August 25, 2004  
Signature Date

August 25, 2004  
Date of Service (For NASD office use only)

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile are jointly and severally liable for:

Forum Fees	= \$ 800.00
Total Fees	= \$ 800.00
Less payments	= \$ 600.00
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**

Ann I. Miller - Non-Public Arbitrator, Presiding Chair  
Pamela B. Houck - Public Arbitrator  
Larry J. Craddock - Public Arbitrator

Concurring Arbitrators:

Ann I. Miller  
Ann I. Miller  
Non-Public Arbitrator, Presiding Chairperson

8-20-04  
Signature Date

Pamela B. Houck  
Pamela B. Houck  
Public Arbitrator

Signature Date

Larry J. Craddock, J.D.  
Larry J. Craddock, J.D.  
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
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**

Ann I. Miller - Non-Public Arbitrator, Presiding Chair  
Pamela B. Houck - Public Arbitrator  
Larry J. Craddock - Public Arbitrator

**Concurring Arbitrators:**

\_\_\_\_\_  
Ann I. Miller  
Non-Public Arbitrator, Presiding Chairperson

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

Pamela B. Houck  
Pamela B. Houck  
Public Arbitrator

Aug 20, 2004  
Signature Date

\_\_\_\_\_  
Larry J. Craddock, J.D.  
Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and Scott D. Lile are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
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**

Ann I. Miller – Non-Public Arbitrator, Presiding Chair  
Pamela B. Houck – Public Arbitrator  
Larry J. Craddock – Public Arbitrator

**Concurring Arbitrators:**

\_\_\_\_\_  
Ann I. Miller  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Pamela B. Houck  
Public Arbitrator

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

  
\_\_\_\_\_  
Larry J. Craddock, J.D.  
Public Arbitrator

8/25/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)