

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

John M. Sommer, individually and as
general partner of the J.M. Sommer Family Trust

v.

02-05604
Denver, Colorado

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and Gregory C. Richardson

Nature of Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

John M. Sommer, individually and as general partner of the J.M. Sommer Family Trust ("Claimants") were represented by Gerald L. Bader, Jr., Esq., of Bader & Associates, LLC, Denver, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and Gregory C. Richardson ("Richardson"), hereinafter referred to as "Respondents," were represented by Gregory S. Tamkin, Esq., of Dorsey & Whitney, LLP, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about September 20, 2002. The Submission Agreements of Claimants were signed by John M. Sommer, individually and as general partner of the J.M. Sommer Family Trust, on or about September 9, 2002.

A Joint Statement of Answer was filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Gregory C. Richardson, on or about November 14, 2002. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about November 8, 2002.

CASE SUMMARY

Claimants asserted causes of action including the following: breach of contract, negligence, unsuitability, breach of The Investor Advisor Act, breach of fiduciary duty, failure to supervise, negligent misrepresentation and respondeat superior. The causes of action related to Claimants' allegation that Respondents made unsuitable recommendations to purchase various high-tech stocks, including Enron, which, according to Claimants, were unsuitable given Claimant John Sommer's

age, financial goals and risk profile. Claimants also asserted that despite paying an advisory fee of 1% of assets managed, Respondents failed to give Claimants appropriate investment advice.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted; Respondents did not guarantee Claimants any rate of return on any investments; Claimants assumed the risk of the alleged losses and, any such risks were properly disclosed to Claimants by Respondents; all claims set forth in the Statement of Claim are barred by the doctrines of laches, estoppel and unclean hands; Claimants' assessment of damages failed to calculate the gains accrued in the accounts and the sums taken out of the accounts by Claimants; and to the extent that Claimants may have suffered any damages, such damages were caused, in whole or in part, by the culpable conduct, fault, negligence, intentional acts and/or wrongful conduct on the part of Claimants and are, therefore, not recoverable from Respondents.

RELIEF REQUESTED

Claimants requested an award in the amount of \$582,220 in compensatory damages, plus punitive damages, attorney's fees, costs and any other relief that the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Respondent Gregory C. Richardson's permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Gregory C. Richardson, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, and appeared and testified at the hearing, is bound by the determination of the 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 originals remain on file with NASD Dispute Resolution ("NASD").

The parties submitted post-hearing submissions on or about August 9, 2004.

AWARD

After considering the pleadings, testimony, evidence presented at the hearing, and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimant, John M. Sommer, as general partner of the J.M. Sommer Family Trust, the sum of Nineteen Thousand Six Hundred Thirty Seven Dollars and Fifty One Cents (\$19,637.51) in compensatory damages relating to the April 17, 2002, Enron transaction;
2. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimant, John M. Sommer, as general partner J.M. Sommer Family Trust, interest on the sum stated above in paragraph #1 at the rate of 8% per annum from and including April 17, 2002, through and including the date of service of this Award;
3. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimant, John M. Sommer, as general partner of the J.M. Sommer Family Trust, the sum of Four Thousand Fifty Six Dollars and Seventy One Cents (\$4,056.71) in compensatory damages relating to the May 21, 2001, Enron transaction;
4. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimant, John M. Sommer, as general partner of the J.M. Sommer Family Trust, interest on the sum stated in paragraph #3 at the rate of 8% per annum from and including May 21, 2001, through and including the date of service of this Award;
5. Claimant, John M. Sommer, as general partner of the J.M. Sommer Family Trust's claims asserted against Respondent, Gregory C. Richardson, each and all, are hereby denied and dismissed with prejudice in their entirety;
6. The claims asserted by Claimant, John M. Sommer, individually, each and all, are hereby denied and dismissed with prejudice in their entirety;
7. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and expungement, are denied with prejudice; and
8. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 375

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
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 4,000

Adjournment Fees

Adjournment granted during these proceedings:

March 8-10, 2004, Adjournment requested by Claimants

Fee Waived by the Panel = \$ 1,200

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 the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: 07/30/2003 1 session

Two (2) Pre-hearing sessions with Panel x \$ 1,200 = \$ 2,400

Pre-hearing conferences: 06/30/2003 1 session
02/27/2004 1 session

Seven (7) Hearing sessions with Panel x \$ 1,200 = \$ 8,400

Hearing Dates:	02/02/2004	1 session
	08/03/2004	2 sessions
	08/04/2004	2 sessions
	08/05/2004	2 sessions

Total Forum Fees = \$ 11,250

The Arbitration Panel has assessed \$ 5,625 of the forum fees, jointly and severally, to John M. Sommer, individually and as general partner of the J.M. Sommer Family Trust.

The Arbitration Panel has assessed \$ 5,625 of the forum fees, jointly and severally, to Merrill Lynch Pierce Fenner & Smith, Inc. and Gregory C. Richardson.

Fee Summary

Claimants, John M. Sommer, individually and as general partner of the J.M. Sommer Family Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 375
<u>Forum Fees</u>	= \$ 5,625
Total Fees	= \$ 6,000
<u>Less payments</u>	= \$ 1,575
Balance Due NASD Dispute Resolution	= \$ 4,425

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

<u>Member Fees</u>	= \$ 7,000
Total Fees	= \$ 7,000
<u>Less payments</u>	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Gregory C. Richardson, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,625
Total Fees	= \$ 5,625
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,625

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

ARBITRATION PANEL

Charles G. Michaels, Esq. - Public Arbitrator, Presiding Chair
Fred W. Roecker - Public Arbitrator
Bruce Brown- Non-Public Arbitrator

Concurring Arbitrators:

Charles G. Michaels, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Fred W. Roecker
Public Arbitrator

Signature Date

Bruce Brown
Non-Public Arbitrator

Signature Date

4/9/04
Date of Service (NASD use only)

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Bruce Brown - Non-Public Arbitrator

Concurring Arbitrators:

Charles G. Michaels

Charles G. Michaels, Esq.
Public Arbitrator, Presiding Chair

9/1/2004
Signature Date

Fred W. Roecker
Public Arbitrator

Signature Date

Bruce Brown
Non-Public Arbitrator

Signature Date

9/9/04
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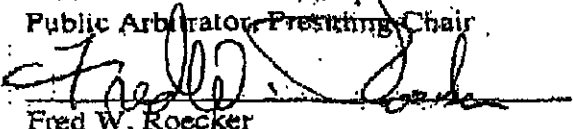
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