

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:
Donald G. and Tanya J. Clark

Case Number: - 02-05623

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Charles Forte

Hearing Site: Albuquerque, New Mexico

NATURE OF THE DISPUTE

Customers vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimants, Donald G. and Tanya J. Clark, ("Clarks"), hereinafter collectively referred to as "Claimants": Frank T. Herdman of the law firm Rubin, Katz, Salazar, Alley Rouse & Herdman, P.C., located in Santa Fe, New Mexico.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Charles Forte ("Forte"), hereinafter collectively referred to as "Respondents": Kenneth C. Mennemeier, Esq. of the law firm, Mennemeier, Glassman & Stroud, LLP, located in Sacramento, California.

CASE INFORMATION

Statement of Claim filed on or about: September 20, 2002
Claimants, Donald G. and Tanya J. Clark, jointly signed the Uniform Submission Agreement: September 20, 2002

Statement of Answer jointly filed by Respondents Merrill Lynch and Forte on or about: November 27, 2002

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Uniform Submission Agreement: October 11, 2002

Respondent Forte signed the Uniform Submission Agreement: November 15, 2002

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, suitability, misrepresentations, negligence and failure to supervise. The causes of action relate to various IRAs, Simple Retirement, Annuities and Case Management accounts with Merrill Lynch. Claimants alleged that their securities accounts at Merrill Lynch were mishandled in that Respondent Forte recommended unsuitable investments. Claimants also alleged that Respondent Merrill Lynch failed to properly supervise Respondent Forte.

Unless specifically admitted in its Answer, Respondents Merrill Lynch and Forte denied the allegations made in the Statement of Claim and asserted the following defenses: waiver, estoppel, laches, comparative and contributory negligence, lack of proximate cause and failure to mitigate damages.

RELIEF REQUESTED

Claimants requested \$500,000.00 in compensatory damages, punitive damages, costs and attorney's fees, arbitration fees and expenses, including forum fees, witness and production fees and other case-related costs, together with such additional relief to which they may be entitled.

Respondents Merrill Lynch and Forte requested dismissal of Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have submitted a Stipulation that asks the Panel to enter a Stipulated Award that provides in pertinent part:

1. Each and every one of Claimant's claims against Respondents Merrill Lynch and Forte is dismissed with prejudice;
2. The Panel recommends and directs that all references to the Claimants' claims and allegations be expunged from the records of Respondent Charles Forte's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that, pursuant to NASD Notice to Members 99-90, Respondent, Charles Forte must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive;
3. All other relief not expressly granted is denied;
4. Merrill Lynch shall bear any unpaid forum fees, particularly and including, any fees assessed by NASD in connection with any proceedings that occur in connection with the parties' Stipulation, or in connection with Merrill Lynch's effort to obtain expungement of this matter from Forte's CRD records; and
5. The parties have approved the form of a Stipulated Award, a copy of which was attached to their Stipulation, and the parties asked that the arbitrators execute an Award substantially in that form.

AWARD

Pursuant to the agreement of the parties, the Panel has decided in full and final resolution of the issues submitted, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Each and every one of Claimants' claims against Respondents Merrill Lynch and Forte is hereby dismissed with prejudice;
- 2.) The Panel recommends and directs that all references to the Claimants' claims and allegations be expunged from the records of Respondent Charles Forte's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that, pursuant to NASD Notice to Members 99-90, Respondent, Charles Forte must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive;
- 3.) Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees;

- 4.) 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

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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge = \$5,200.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Forum Fees and Assessments

The 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 Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: March 10, 2004 1 session

Three (3) Hearing sessions x \$1,125.00 = \$3,375.00

Hearing Dates: November 3, 2004 2 sessions

November 4, 2004 1 session

Total Forum Fees = \$4,500.00

The parties have agreed to pay forum fees as follows:

Respondent shall pay 100% of the total forum fees in the amount of \$4,500.00

Fee Summary

1. Claimants, Donald G. and Tanya J. Clark, are jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Less payments = \$1,425.00

Refund Due from NASD Dispute Resolution = \$1,125.00

2. 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

3. Respondents, Merrill Lynch and Forte are jointly and severally liable for:

Forum Fees = \$4,500.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$4,500.00

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

Barry H. Barnett, Esq.	-	Public Arbitrator, Presiding Chairperson
James J. Ashe	-	Public Arbitrator
David G. Burlingame, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Barry H. Barnett
Barry H. Barnett, Esq.
Public Arbitrator, Presiding Chair

4/5/05
Signature Date

/s/ James J. Ashe
James J. Ashe
Public Arbitrator

4/5/05
Signature Date

/s/ David G. Burlingame
David G. Burlingame, Esq.
Non-Public Arbitrator

4/5/05
Signature Date

4/7/05
Date of Service (For NASD office use only)

3. Respondents, Merrill Lynch and Forte are jointly and severally liable for:

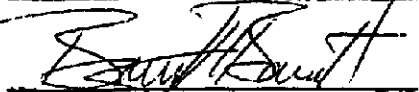
Forum Fees	= \$4,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,500.00

All balances are due to NASD Dispute Resolution.

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Public Arbitrator

Signature Date

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Non-Public Arbitrator

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Arbitration 02-05823
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3. Respondents, Merrill Lynch and Forte are jointly and severally liable for:

Forum Fees	= \$4,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$4,500.00

All balances are due to NASD Dispute Resolution.

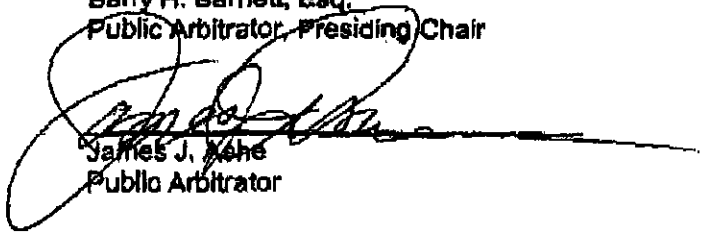
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4/5/05
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Public Arbitrator

Signature Date



David G. Burlingame, Esq.
Non-Public Arbitrator



Signature Date