

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
James D. Shute, IRA

Case Number: 02-06227

Name of the Respondent  
Merrill Lynch Pierce Fenner & Smith Inc

Hearing Site: Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimant, James D. Shute, IRA, hereinafter referred to as "Claimant", was represented by Richard A. Levan, Esq., Richard A. Levan & Associates, Philadelphia, Pennsylvania.

Respondent, Merrill Lynch Pierce Fenner & Smith Inc., hereinafter referred to as "Respondent", was represented by Daniel V. Folt, Esq., Duane Morris, Wilmington, Delaware.

**CASE INFORMATION**

Statement of Claim filed on: November 11, 2002.

Claimant signed the Uniform Submission Agreement on: November 11, 2002.

Statement of Answer filed by Respondent on: January 28, 2003.

A representative of Respondent signed the Uniform Submission Agreement on: December 18, 2002.

**CASE SUMMARY**

Claimant asserted the following cause of action: negligence. The cause of action relates to the decline in the value of his Individual Retirement Account held at Respondent's firm, and did not specify any particular stocks or trades at issue.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimant's claim is barred by the doctrines of waiver, estoppel and laches; Respondent did not owe Claimant any fiduciary duties; Claimant's claim is barred by the doctrines of unavoidable consequences, actual authority, consent, and acquiescence; and, failure to mitigate damages.

**RELIEF REQUESTED**

Claimant requested that he be paid two hundred thousand dollars (\$200,000.00) in compensatory damages.

Respondent requested that the claim be denied in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

**AWARD**

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

1. That Claimant's claims are denied in their entirety;
2. That the parties shall bear their respective costs, including attorney's fees, except as to Fees specifically addressed below; and,
3. That any and all relief not specifically addressed herein is denied in its entirety.

**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
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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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith Inc. is a party.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

**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	= \$ 450
Pre-hearing conference: July 31, 2003 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,125	= \$ 1,125
Pre-hearing conference: June 9, 2003 1 session	

Eight (8) Hearing sessions @ \$ 1,125 = \$ 9,000

Hearing Dates:           August 6, 2003           2 sessions  
                              August 7, 2003           2 sessions  
                              August 8, 2003           2 sessions  
                              August 15, 2003          2 sessions

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Total Forum Fees = \$ 10,575

The Panel has assessed \$ 10,575 of the forum fees to Claimant.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300
Forum Fees	= \$ 10,575
Total Fees	= \$ 10,875
Less payments	= \$ 1,425
Balance Due NASD Dispute Resolution	= \$ 9,450

2. Respondent is assessed and shall pay:

Member Fees	= \$ 5,200
Total Fees	= \$ 5,200
Less payments	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 00

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

**ARBITRATION PANEL**

June McLaughlin-Cheng, Esq.	-	Public Arbitrator, Presiding Chairperson
James A. Jennings, Esq.	-	Public Arbitrator, Panelist
Jean K. McLenigan	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

\_\_\_\_\_  
June McLaughlin-Cheng, Esq.  
Public Arbitrator, Presiding Chairperson

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

James A. Jennings, Esq.  
James A. Jennings, Esq.  
Public Arbitrator, Panelist

Sept 8, 2003  
Signature Date

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Jean K. McLenigan  
Non-Public Arbitrator, Panelist

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Signature Date

September 15, 2003  
Date of Service (For NASD Dispute Resolution office use only)

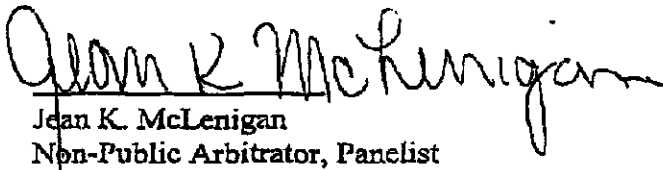
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Public Arbitrator, Presiding Chairperson

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Signature Date

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James A. Jennings, Esq.  
Public Arbitrator, Panelist

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

  
\_\_\_\_\_  
Jean K. McLenigan  
Non-Public Arbitrator, Panelist

9/9/03  
\_\_\_\_\_  
Signature Date

September 15, 2003  
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Date of Service (For NASD Dispute Resolution office use only)