

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Sydney Shapiro and Sydney Shapiro Revocable Trust, Claimants v. Merrill Lynch Pierce Fenner & Smith Inc., Respondent

Case Number: 02-06410

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Ryan K. Bakhtiari, Esq.
Keith D. Fraser, Esq.
Aidikoff & Uhl
Beverly Hills, California

For Respondent:

Peter B. Dolan, Esq.
The Dolan Law Firm
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: October 24, 2002

Claimants' Joint Uniform Submission Agreement signed: October 21, 2002

Statement of Answer filed by Respondent: February 26, 2003

Respondent's Uniform Submission Agreement signed: January 22, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud, constructive fraud, failure to supervise, suitability, unfair or deceptive practices against senior citizens, Elder Abuse, violation of federal and state securities laws, and violation of NASD and NYSE rules of fair practice. Claimants' allegations involved securities in Janus Enterprise Fund, Janus Mercury Fund, Invesco Telecommunications Fund, the Janus Venture Fund, Lord Abbott Developing Growth Fund, Munder NetNet Fund, Van Kampen Emerging Growth Fund, Exodus Communications, Inc., Inktomi Corp, Infospace.com, Inc., SDL Inc., and Sun Microsystems, Inc.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$85,000.00 in compensatory damages, treble damages pursuant to California Civil Code §3345, unspecified punitive damages, pre- and post-judgment interest at the legal rate, disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondent, lost opportunity cost of what \$170,00.00 would have earned, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and costs of the arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

On February 22, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 30, 2003, Respondent's counsel signed a Waiver Agreement on Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

At the evidentiary hearing, Respondent moved to dismiss Claimants' Statement of Claim and the Panel took the motion under advisement. After due deliberation the Panel denied the motion.

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

- 1) Claimants' claims are denied in their entirety.
- 2) Claimants' claims for punitive damages are denied in their entirety.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("the Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch Pierce Fenner & Smith Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting that lasts four (4) hours or less between the parties and the Chair or between the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: October 30, 2003 1 session	
1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conferences: May 23, 2003 1 session	
6 Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: January 27, 2004 2 sessions	
January 28, 2004 2 sessions	
January 29, 2004 2 sessions	

Total Forum Fees	= \$8,325.00
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The Panel assessed \$8,325.00 of the forum fees to Respondent Merrill Lynch Pierce Fenner & Smith Inc.

Fee Summary

1. Claimants Sydney Shapiro and Sydney Shapiro Revocable Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Refund Due Claimants	= \$(1,125.00)

2. Respondent Merrill Lynch Pierce Fenner & Smith Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 8,325.00</u>
Total Fees	= \$13,525.00
<u>Less payments</u>	<u>= \$ (5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,325.00

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

ARBITRATION PANEL

Joyce L. Hurley	-	Public Arbitrator, Presiding Chair
Elliott Finkel, Esq.	-	Public Arbitrator
Brian L. Spahr, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joyce L. Hurley
Chair, Public Arbitrator

Signature Date

Elliott Finkel, Esq.
Public Arbitrator

Signature Date

Brian L. Spahr, CFP
Non-Public Arbitrator

Signature Date

February 11, 2004
Date of Service

ARBITRATION PANEL

Joyce L. Hurley	-	Public Arbitrator, Presiding Chair
Elliott Finkel, Esq.	-	Public Arbitrator
Brian L. Spahr, CFP	-	Non-Public Arbitrator

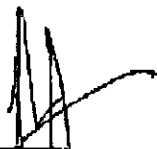
Concurring Arbitrators' Signatures

Joyce L. Hurley
Chair, Public Arbitrator

Signature Date

Elliott Finkel, Esq.
Public Arbitrator

Signature Date



Brian L. Spahr, CFP
Non-Public Arbitrator



Signature Date

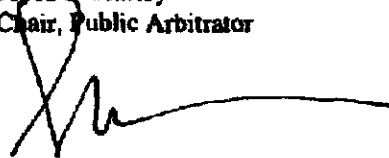
NASD Dispute Resolution
Arbitration No. 02-06410
Award Page 5 of 5

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Brian L. Spahr, CFP	-	Non-Public Arbitrator

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Joyce L. Hurley
Chair, Public Arbitrator



Elliott Finkel, Esq.
Public Arbitrator

Signature Date

2-10-04

Signature Date

Brian L. Spahr, CFP
Non-Public Arbitrator

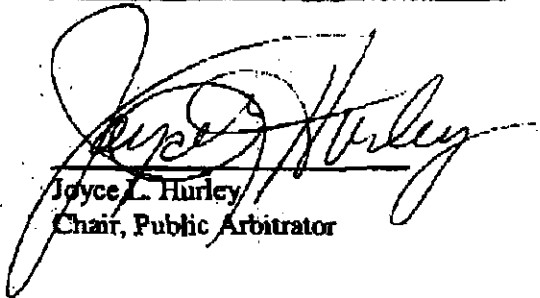
Signature Date

NASD Dispute Resolution
Arbitration No. 02-06410
Award Page 5 of 5

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Chair, Public Arbitrator


Signature Date

Elliott Finkel, Esq.
Public Arbitrator

Signature Date

Brian L. Spahr, CFP
Non-Public Arbitrator

Signature Date