

**AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Names of Claimants

Margaret Jobe and Max Jobe

and

Case Number: 02-06429
Hearing Site: Troy, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Daniel Lepore and
Krista Girrbach

NATURE OF CASE

Customers v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Margaret Jobe and Max Jobe ("Claimants") were represented by Joseph H. Spiegel, Esq., Law Offices of Joseph H. Spiegel, P.C., Ann Arbor, Michigan

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"), Daniel Lepore ("Lepore"), and Krista Girrbach ("Girrbach"), hereinafter referred to as "Respondents," were represented by Dennis K. Egan, Esq., Butzel Long, Bloomfield Hills, Michigan

CASE INFORMATION

The Statement of Claim was filed on or about October 25, 2003. The Submission Agreement of Claimants Margaret Jobe and Max Jobe was signed on or about October 15, 2002.

Statement of Answer and Motion for More Definite Statement of Claim was filed jointly by Respondents MLPFS, Lepore and Girrbach on or about February 11, 2003. The Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about February 11, 2003 by Daniel E. Glatter.

Claimants' Motion to Strike Respondents' Preliminary Statement of Answer, Response to Motion for More Definitive Statement, Motion to Strike Affirmative Defenses, and Counter-Motion to Bar Testimony was filed on or about February 26, 2003. Respondents' Reply was filed on or about March 3, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: liability under 1934 Act Anti-Fraud Provisions against all Respondents, violations of Sections 12 and 17 of the Securities Act of 1933, as amended, liability under the 1933 Act anti-fraud provisions against all Respondents, liability under Michigan blue sky law, common law fraudulent misrepresentation, negligent misrepresentation and silent fraud, breach of common law fiduciary duty by all Respondents, Michigan Consumer Protection Act violations by all Respondents, common law breach of contract, and common law negligence. The causes of action relate to Respondents' recommendation and purchase of high risk mutual funds and tech stocks in Claimants' IRA accounts

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' losses are overstated and speculative, Claimants have not suffered any damages, Claimants' losses, if any, were caused by market conditions beyond the control of Respondents, and Claimants are estopped by their own conduct from asserting any and all claims alleged in the Statement of Claim.

RELIEF REQUESTED

Claimants requested an award of over \$72,000.00 as determined by the Panel, rescission, interest, exemplary damages, costs, expenses, attorney fees, and such other relief the Panel deems equitable and proper.

Respondents requested that the claims asserted against them be denied in their entirety, that they be awarded all fees and costs in connection with this matter, and that all references to this matter be expunged from the registration records of Respondents Lepore and Girrbach.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Daniel Lepore and Krista Girrbach did not file with the NASD Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The Panel hereby denies all Motions which have not previously been decided.

At hearing Claimants moved for sanctions alleging that Respondents' withheld evidence. The Panel denied the Motion.

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 original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Claimants' claims, each and all, are denied and dismissed with prejudice;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel Lepore's and Respondent Krista Girrbaich's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Lepore and Girrbaich must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4.) That 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	= \$ 300.00
Counterclaim filing fee (expungement request)	= \$ 250.00

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 persons 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	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

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 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 x \$450.00	= \$	450.00
Pre-hearing conference: August 29, 2003	1 session	
One (1) Pre-hearing session with Panel x \$750.00	= \$	750.00
Pre-hearing conference: June 2, 2003	1 session	
Five (5) Hearing sessions x \$750.00	= \$	3,750.00
Hearing Dates: September 24, 2003	2 sessions	
September 25, 2003	2 sessions	
September 26, 2003	1 session	
Total Forum Fees	= \$	4,950.00

The Arbitration Panel has assessed \$4,950.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Margaret Jobe and Max Jobe, are jointly and severally liable for:

Initial Filing Fee	= \$	225.00
Total Fees	= \$	225.00
Less payments	= \$	975.00
Refund Due from NASD Dispute Resolution	= \$	750.00

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

Member Fees	= \$	3,550.00
Forum Fees	= \$	4,950.00
Total Fees	= \$	8,500.00
Less payments	= \$	3,550.00
Balance Due NASD Dispute Resolution	= \$	4,950.00

Respondents, Daniel Lepore and Krista Girrback, are jointly and severally liable for:

Counterclaim Filing Fee	= \$	250.00
Total Fees	= \$	250.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	250.00

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

ARBITRATION PANEL

Thomas Anthony Van Tiem, Sr., Esq. - Public Arbitrator, Presiding Chair
Andrew G. Young - Public Arbitrator
Anthony J. Bove, III - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas Anthony Van Tiem, Sr., Esq.
Thomas Anthony Van Tiem, Sr., Esq.
Public Arbitrator, Presiding Chair

10/14/03
Signature Date

/s/ Andrew G. Young
Andrew G. Young
Public Arbitrator

10/14/03
Signature Date

/s/ Anthony J. Bove, III
Anthony J. Bove, III
Non-Public Arbitrator

10/14/03
Signature Date

10/17/03
Date of Service (For NASD office use only)

ARBITRATION PANEL

Thomas Anthony Van Tlem, Sr., Esq. - Public Arbitrator, Presiding Chair

Andrew G. Young - Public Arbitrator

Anthony J. Bove, III - Non-Public Arbitrator

Concurring Arbitrators:

Thomas Anthony Van Tlem, Sr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Andrew G. Young
Public Arbitrator

Signature Date


Anthony J. Bove, III
Non-Public Arbitrator

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Signature Date

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NASD Dispute Resolution
Arbitration No. 02-08428
Award Page 5 of 5

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Andrew G. Young - Public Arbitrator
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