

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Edmona Mashburn, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and David W. Ivarie, Respondents

Case Number: 02-06542

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Michael P. Mears, Esq.
Attorney at Law
Bakersfield, California

For Respondents:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: October 25, 2002

Amendment to Statement of Claim filed: December 23, 2003

Claimant's Uniform Submission Agreement signed: October 24, 2002

Joint Statement of Answer filed by Respondents: April 25, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: January 15, 2003

Respondent David W. Ivarie's Uniform Submission Agreement signed: January 21, 2003

CASE SUMMARY

In the Statement of Claim, Claimant alleged failure to supervise, breach of fiduciary duty, churning, manipulations, and unauthorized trading, involving unspecified corporate bonds and mutual funds.

In the Amendment to the Statement of Claim, Claimant added the allegations of misrepresentations, non-disclosures, omission of facts, and unsuitability.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$89,857.00 in trading losses, \$26,665.00 in disgorgement of commissions, \$150,000.00 in punitive damages, unspecified interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of any reference to this matter from the regulatory record of registered persons, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On October 15, 2003, Claimant and Claimant's 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*.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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 and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant and Respondents have entered into a confidential settlement agreement.
- 2) Claimant's claims are dismissed with prejudice.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David W. Ivarie's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent David W. Ivarie must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated shall bear any additional costs or fees charged by NASD in connection with any proceedings that occur in connection with this Stipulation or otherwise occur in connection with Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's effort to obtain expungement of this matter from Respondent David W. Ivarie's CRD records.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

FEES

Pursuant to 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

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 Incorporated 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

Adjournment Fees

The following adjournment fees are assessed:

September 15-17, 2004 hearing adjournment requested by all parties = \$ 1,125.00

1. The Panel assessed \$562.50 of the adjournment fees to Claimant.
2. The Panel assessed \$562.50 of the adjournment fees jointly and severally to Respondents.

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 between the parties and the Panel. The following fees are assessed:

2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: January 8, 2004 1 session	
December 12, 2005 1 session	

Total Forum Fees = \$ 2,250.00

1. The Panel assessed \$562.50 of the forum fees to Claimant.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.
3. The parties stipulated that \$1,125.00 of the forum fees are assessed to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 1,425.00
<u>Less payments</u>	= \$(2,125.00)
Refund Due Claimant	= \$(700.00)

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 1,125.00
Total Fees	= \$ 6,325.00
<u>Less payments</u>	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 1,125.00

3. Respondents are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 1,125.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

Gerald F. Corrigan	..	Public Arbitrator, Presiding Chair
Stanley C. Morris	..	Public Arbitrator
Barton J. Brewer	..	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Gerald F. Corrigan
Chair, Public Arbitrator

11/03/2005
Signature Date

Stanley C. Morris
Public Arbitrator

Signature Date

Barton J. Brewer
Non-Public Arbitrator

Signature Date

12/20/05
Date of Service

ARBITRATION PANEL

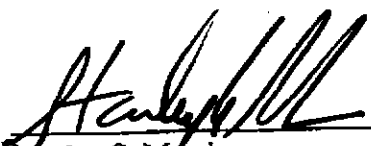
Gerald F. Corrigan
Stanley C. Morris
Barton J. Brewer

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gerald F. Corrigan
Chair, Public Arbitrator

Signature Date



Stanley C. Morris
Public Arbitrator

12-12-05
Signature Date

Barton J. Brewer
Non-Public Arbitrator

Signature Date

12/20/05
Date of Service

ARBITRATION PANEL

Gerald F. Corrigan
Stanley C. Morris
Barton J. Brewer

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

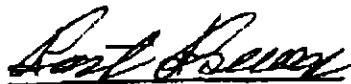
Concurring Arbitrators' Signatures:

Gerald F. Corrigan
Chair, Public Arbitrator

Signature Date

Stanley C. Morris
Public Arbitrator

Signature Date



Barton J. Brewer
Non-Public Arbitrator



Signature Date

1/6/05
Date of Service