

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

David L. Hubbs

and

02-06601
Nashville, Tennessee

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

David L. Hubbs ("**Claimant**") appeared *pro se*.

Merrill Lynch Pierce Fenner & Smith Inc. ("**Respondent**") was represented by Avital Stadler, Esq., Sutherland, Asbill & Brennan, Atlanta, Georgia.

CASE INFORMATION

The Statement of Claim was filed on or about November 4, 2002. The Submission Agreement of Claimant David L. Hubbs was signed on or about October 29, 2002.

The Statement of Answer was filed by Respondent Merrill Lynch Pierce Fenner & Smith Inc. on or about December 30, 2002. The Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith Inc. was signed on or about December 23, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise and suitability. Claimant states that the Respondent is to blame for the decline in value of his mutual funds.

Claimant specifically states the following:

I choose Merrill Lynch to manage my 401K, being a well respected firm. I had no complaints the first three years (1997, 1998, and 1999). For some reason, the last two years (2000 and 2001), something drastic happened to my account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: The Statement of Claim fails to state a cause of action upon which relief may be granted; The Statement of Claim is barred, in whole or in part, by the equitable doctrines of laches, unclean hands and estoppel; All activity in the accounts was suitable for and consistent with Claimant's stated investment objectives; The loss, if any, was sustained as a result of Claimant's own negligence and/or contributory negligence; Claimant, by his actions and inactions, waived the right to pursue any claim; Claimant authorized, directed and ratified all of the transactions in Claimant's accounts; Claimant is barred from recovery because he knowingly assumed the risks of his investments; The Statement of Claim is barred, in whole or in part, based upon Claimant's failure to mitigate damages; At all times mentioned in the Statement of Claim, Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees, and Merrill Lynch at all times acted in good faith; Claimant failed to use requisite due diligence in monitoring, trading, managing, and handling Claimant's own accounts; To the extent that Claimant seeks to assert claims for alleged violations of NASD and NYSE rules, no such private right of action exists; Claimant's claims, if any, are barred, in whole or in part, by the statute of limitations; Merrill Lynch is not subject to controlling person liability, and the "good faith" defense applies to negate such a claim and Claimant is not entitled to recover attorneys' fees or punitive damages in this arbitration under applicable law.

RELIEF REQUESTED

Claimant requested an award in the amount of \$100,000.00 for compensatory damages.

Respondent requested that the claims asserted against it be denied in their entirety and that all costs of this arbitration be borne by the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The Respondent submitted a motion prior to the hearing requesting that their witness, Christopher Brock, testify by telephone. The panel granted 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 the NASD Dispute Resolution (the "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. The claims asserted in this matter shall be and are hereby denied.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$225

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 event 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
Total Member Fees	\$	3,550.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Pre-hearing session with Panel	X	750	\$	750.00
	May 6, 2003	1 session			
2	Hearing sessions	X	750	\$	1,500.00
	November 4, 2003	2 sessions			
	Total Forum Fees			\$	2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees to David L. Hubbs.
The Arbitration Panel has assessed \$1,125.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith Inc.

Fee Summary

Claimant, David L. Hubbs, shall be and hereby is liable for:

Initial Filing Fee	= \$	225.00
<u>Forum Fees</u>	= \$	1,125.00
Total Fees	= \$	1,350.00
<u>Less payments</u>	= \$	-975.00
Balance Due NASD Dispute Resolution	= \$	375.00

Respondent, Merrill Lynch Pierce Fenner & Smith Inc., shall be and hereby is liable for:

Member Fees	= \$	3,550.00
<u>Forum Fees</u>	= \$	1,125.00
Total Fees	= \$	4,675.00
<u>Less payments</u>	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	1,125.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Darrell A. Hillis - Public Arbitrator, Presiding Chair
Joseph Charles Smolira, Ph.D - Public Arbitrator
R. Patrick Shepherd - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Darrell A. Hillis
Darrell A. Hillis
Public Arbitrator, Presiding Chair

11/17/03
Signature Date

/s/ Joseph Charles Smolira, Ph.D.
Joseph Charles Smolira, Ph.D
Public Arbitrator

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/s/ R. Patrick Shepherd
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Non-Public Arbitrator

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NASD Dispute Resolution, Inc.
 Arbitration No. 02-06601
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