

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

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In the Matter of the Arbitration Between:

Arlene N. Arterberry, Claimant v. Donald R. Bentley, James S. Gross, Larry R. Petty, Merrill Lynch Pierce Fenner & Smith, Renee L. Rudnick, Catherine T. Reese, Rittenhouse Asset Management, Inc. aka Rittenhouse Financial Services, Respondents

Case Number: 02-07271

Hearing Site: Reno, Nevada

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Nature of the Dispute: Customer v. Member Firm, Non-Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Arlene N. Arterberry  
In Pro Per  
Shasta Lake, California

For Respondents

Donald R. Bentley

James S. Gross

Larry R. Petty and

Merrill Lynch Pierce Fenner & Smith:

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

For Respondents

Renee L. Rudnick

Catherine T. Reese and

Rittenhouse Asset Management, Inc.

aka Rittenhouse Financial Services:

Brian E. Martin, Esq.  
Bell, Boyd & LLOYD LLC  
Chicago, Illinois

**CASE INFORMATION**

Statement of Claim received: December 2, 2002

Claimant's Uniform Submission Agreement signed: November 25, 2002

Joint Statement of Answer filed by Respondents Donald R. Bentley, James S. Gross, Larry R.

Petty and Merrill Lynch Pierce Fenner & Smith: March 17, 2003

Respondents Larry R. Petty's and James S. Gross' Motion to Dismiss filed: March 17, 2003

Joint Statement of Answer filed by Respondents Renee L. Rudnick Catherine T. Reese and Rittenhouse Asset Management, Inc. aka Rittenhouse Financial Services: February 27, 2003

Respondents Renee L. Rudnick's and Catherine T. Reese's Motion to Dismiss filed: February 27, 2003

Joint Amended Statement of Answer filed by Respondents Renee L. Rudnick Catherine T. Reese and Rittenhouse Asset Management, Inc. aka Rittenhouse Financial Services: September 15, 2003

Respondent Donald R. Bentley's Uniform Submission Agreement signed: March 18, 2003

Respondent James S. Gross' Uniform Submission Agreement: Not signed

Respondent Larry R. Petty's Uniform Submission Agreement: Not signed

Respondent Merrill Lynch Pierce Fenner & Smith's Uniform Submission Agreement signed: February 24, 2003

Respondent Renee L. Rudnick's Uniform Submission Agreement signed: February 26, 2003

Respondent Catherine T. Reese's Uniform Submission Agreement signed: February 26, 2003

Respondent Rittenhouse Asset Management, Inc. aka Rittenhouse Financial Services' Uniform Submission Agreement signed: February 26, 2003

### **CASE SUMMARY**

Claimant's Statement of Claim alleged errors and charges, negligence, improper transfers, misrepresentation, omission of facts, and failure to execute. The Claimant's allegations involved the purchase and sale of various unspecified securities.

Respondents Donald R. Bentley, James S. Gross, Larry R. Petty and Merrill Lynch Pierce Fenner & Smith denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted several affirmative defenses.

Respondents Renee L. Rudnick Catherine T. Reese and Rittenhouse Asset Management, Inc. aka Rittenhouse Financial Services denied the allegations of wrongdoing set forth in the Claimant's

Statement of Claim and asserted several affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$150,000.00, punitive damages in the amount of \$250,000.00, pre-judgment interest in the amount of \$300.00 and unspecified costs.

Respondents Donald R. Bentley, James S. Gross, Larry R. Petty and Merrill Lynch Pierce Fenner & Smith requested dismissal of the Claimant's Statement of Claim in its entirety and an award of costs, including attorney's fees. Respondents also requested that the panel recommend the expungement of all references to the above-captioned arbitration from Respondents Donald R. Bentley's, James S. Gross' and Larry R. Petty's registration records maintained by the NASD Central Registration Depository.

Respondents Renee L. Rudnick's Catherine T. Reese's and Rittenhouse Asset Management, Inc.'s aka Rittenhouse Financial Services Answer requested dismissal of the Claimant's Statement of Claim in its entirety and an award of costs, including attorney's fees. Respondents' Amended Answer requested that the panel recommend the expungement of all references to the above-captioned arbitration from Respondents Renee L. Rudnick's Catherine T. Reese's registration records maintained by the NASD Central Registration Depository.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents James S. Gross and Larry R. Petty did not file with the NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On September 15, 2003, Respondent Renee L. Rudnick Catherine T. Reese and Rittenhouse Asset Management, Inc. aka Rittenhouse Financial Services filed an Amended Statement of Answer pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On March 17, 2003, Respondents Larry R. Petty and James S. Gross made a motion to dismiss Claimant's Statement of Claim. On February 27, 2003, Respondents Renee L. Rudnick and Catherine T. Reese made a motion to dismiss Claimant's Statement of Claim. On November 21, 2003, a telephonic pre-hearing conference was held, attended by Claimant, Counsel for all Respondents and the Arbitration Panel. After due deliberation the Panel granted the motion to dismiss Respondents Larry R. Petty, James S. Gross, Renee L. Rudnick and Catherine T. Reese. The Arbitration Panel ordered that all claims against said Respondents Larry R. Petty, James S. Gross, Renee L. Rudnick and Catherine T. Reese were dismissed with prejudice.

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) Claimant's claims are denied in their entirety.
- 2) After considering the pleadings and all evidence presented in this matter, the Panel finds that the claims advanced by Claimant in this matter have no factual basis or merit and that said claims are frivolous. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Donald R. Bentley's, Larry R. Petty's, James S. Gross', Renee L. Rudnick's and Catherine T. Reese's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Donald R. Bentley, Larry R. Petty, James S. Gross, Renee L. Rudnick and Catherine T. Reese must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 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 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>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

#### **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 Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$ 1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: November 12, 2003	1 session
November 21, 2003	1 session

One (1) Pre-hearing conference session with the Chairperson @ \$450.00/session	= \$ 450.00
Pre-hearing conference: March 3, 2004	1 session

Four (4) Hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearings: March 22, 2004	2 sessions
March 23, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 7,200.00</b>
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1. The Panel assessed \$1,350.00 of the forum fees jointly and severally to Respondents Donald R. Bentley and Merrill Lynch Pierce Fenner & Smith.
2. The Panel assessed \$5,850.00 of the forum fees to Claimant.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$5,850.00
Total Fees	= \$6,150.00
Less waiver of Filing Fee	= \$ (300.00)
Less payments	= \$ (300.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$5,550.00</b>

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

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ (0.00)</b>

3. Respondents, Donald R. Bentley and Merrill Lynch Pierce Fenner & Smith, are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,350.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,350.00</b>

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.

NASD Dispute Resolution

Arbitration No. 02-07271

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**ARBITRATION PANEL**

*Joseph C. Roberts* -

*Charles B. Shryock* -

*Daniel Dunnington* -

*Public Arbitrator, Presiding Chair*

*Public Arbitrator*

*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**



**JOSEPH C. ROBERTS**

Chair, Public Arbitrator

4/8/04

Signature Date

**CHARLES B. SHRYOCK**

Public Arbitrator

Signature Date

**DANIEL DUNNINGTON**

Non-Public Arbitrator

Signature Date

4/8/04

Date of Service

**ARBITRATION PANEL**

<i>Joseph C. Roberts</i>	-	<i>Public Arbitrator, Presiding Chair Philip</i>
<i>Charles B. Shryock</i>	-	<i>Public Arbitrator</i>
<i>Daniel Dunnington</i>	-	<i>Non-Public Arbitrator</i>


**Concurring Arbitrators' Signatures**

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JOSEPH C. ROBERTS  
Chair, Public Arbitrator

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Signature Date

  
CHARLES B. SHRYOCK  
Public Arbitrator

April 8, 2004  
Signature Date

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DANIEL DUNNINGTON  
Non-Public Arbitrator

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Signature Date

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Date of Service



**ARBITRATION PANEL**

*Joseph C. Roberts*  
*Charles B. Shryock*  
*Daniel Dunnington*

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

**Concurring Arbitrators' Signatures**

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**JOSEPH C. ROBERTS**  
Chair, Public Arbitrator

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Signature Date

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**CHARLES B. SHRYOCK**  
Public Arbitrator

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Signature Date

*Daniel Dunnington*  
**DANIEL DUNNINGTON**  
Non-Public Arbitrator

4-8-04  
Signature Date

4/8/04  
Date of Service