

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Ann G. Prather,
Claimant,

vs.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
and Phillip A. Duncan,
Respondents.

Case Number: 02-07327

Hearing Site: Dallas, Texas

NATURE OF CASE

Customer versus a Member and an Associated Person.

REPRESENTATION OF PARTIES

Claimant Ann G. Prather, hereinafter referred to as "Claimant": Robert L. Tobey, Johnston Tobey, P.C., 900 Jackson Street, 710 Founders Square, Dallas, Texas 75202.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phillip A. Duncan: Jack D. Ballard, The Ballard Law Firm, 3700 Buffalo Speedway, #250, Houston, Texas 77098.

CASE INFORMATION

The Claimant's Statement of Claim was filed on or about: December 2, 2002.

The Submission Agreement of Claimant was signed on or about: November 27, 2002.

Respondents' Answer was filed on or about: February 11, 2003.

The Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") was signed on or about February 11, 2003.

The Submission Agreement of Respondent Phillip A. Duncan was signed on or about January 21, 2003.

On or about April 26, 2004, Claimant and Respondents reached an agreement to settle the claims asserted in the arbitration proceeding, and each of the Respondents and Claimant have executed a Settlement Agreement and Release.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability, misrepresentations and omissions, failure to supervise, fraud and breach of fiduciary duty. Claimants requested actual damages, interest, punitive damages, costs, expenses and legal fees. The causes of action relate to stocks held in Claimant's accounts at Merrill Lynch.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: (i) to the extent Claimant incurred any damages, such damages were attributable to market conditions and not to any acts or omissions of Respondents; (ii) estoppel; (iii) ratification; (iv) failure to mitigate; and (v) that an award of punitive or exemplary damages would be in violation of the United States and Texas Constitutions.

RELIEF REQUESTED

In light of the settlement of the claims, Claimant and Respondents request that all claims in this case be dismissed with prejudice and Respondents request and Claimant has agreed to not oppose the expungement of Claimant's complaint from the CRD record of Phillip A. Duncan.

OTHER ISSUES CONSIDERED AND DECIDED

The case settled, and each of the Respondents and the Claimant executed a Settlement Agreement and Release.

This award was prepared, in part, based on a proposed award document submitted by Respondents.

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 remains on file with the NASD Dispute Resolution.

AWARD

Pursuant to the parties' agreement, and after considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

1. All claims in this case are dismissed with prejudice pursuant to the parties' settlement agreement;
2. That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses, including attorney's fees, incurred in this matter.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Phillip A. Duncan's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to the NASD Notices to Members 99-09, Respondent Phillip A. Duncan 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 attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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 events giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith Incorporated.

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

Adjournment Fees

The following adjournment fees are assessed: None.

Forum Fees and Assessments

The Panel or Code 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$ 450/session	= \$ 450.00
Pre-hearing conference: October 30, 2003 One session	
One (3) Pre-hearing conference session with the Panel @ \$1,125/session	= \$1,125.00
Pre-hearing conference: August 11, 2003 One session	
Total Forum Fees	= \$1,575.00

Pursuant to Rule 10332(f), NASD Dispute Resolution retains both the filing fee and hearing session deposit when a matter is settled or withdrawn within eight business days of the first scheduled hearing. Therefore, NASD Dispute Resolution shall retain the \$300.00 filing fee and the \$1,125.00 hearing session deposit paid by the Claimant, Ann G. Prather. The retained hearing session deposit shall be applied to any forum fees assessed against the Claimant.

Pursuant to Rule 10306, Claimant Ann G. Prather, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated and Respondent Phillip A. Duncan shall each pay 1/3 (\$525.00) of the forum fees assessed in this matter.

Fee Summary

Claimant Ann G. Prather be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
Rule 10332(f) Forfeiture	= \$ 600.00
Forum Fee	= \$ 525.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 525.00
Total Fees	= \$ 5,725.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 525.00

Respondent Phillip A. Duncan is solely liable for:

Forum Fees	= \$ 525.00
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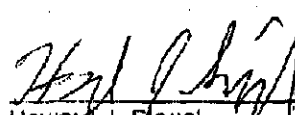
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 525.00

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

ARBITRATION PANEL

Howard J. Siegel, J.D. - Public Arbitrator, Presiding Chair
K. Steve Kimball, CFA - Public Arbitrator
Robert K. Hedrick - Industry Arbitrator

Concurring Arbitrators' Signatures


Howard J. Siegel
Public Arbitrator, Presiding Chair

6/14/04
Signature Date

K. Steve Kimball, CFA
Public Arbitrator

Signature Date

Robert K. Hedrick
Industry Arbitrator

Signature Date

6/15/04 
Date of Service (For NASD office use only)

NASD Dispute Resolution

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Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 525.00

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K. Steve Kimball, CFA - Public Arbitrator
Robert K. Hedrick - Industry Arbitrator

Concurring Arbitrators' Signatures

Howard J. Siegel
Public Arbitrator, Presiding Chair

Signature Date

K. Steve Kimball

K. Steve Kimball, CFA
Public Arbitrator

June 8, 2004
Signature Date

Robert K. Hedrick
Industry Arbitrator

Signature Date

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Date of Service (For NASD office use only)

Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 525.00

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K. Steve Kimball, CFA - Public Arbitrator
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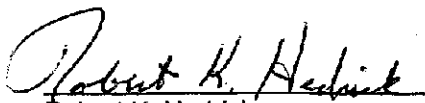
Concurring Arbitrators' Signatures

Howard J. Siegel
Public Arbitrator, Presiding Chair

Signature Date

K. Steve Kimball, CFA
Public Arbitrator

Signature Date



Robert K. Hedrick
Industry Arbitrator

June 9, 2004

Signature Date

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Date of Service (For NASD office use only)