

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Sherilyn Gilmore, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

Case Number: 02-07427

Hearing Site: San Diego, California

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant:

G. Mark Brewer, Esq.
Daniel M. Carlson, Esq.
Brewer & Carlson, LLP
La Jolla, California

For Respondent:

Garrett K. Craig, Esq.
Jennifer A. Ratner, Esq.
Sidley Austin Brown & Wood, LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: December 6, 2002

Claimant's Uniform Submission Agreement signed: December 8, 2002

Statement of Answer filed by Respondent: March 4, 2003

Respondent's Uniform Submission Agreement signed: January 21, 2003

CASE SUMMARY

Claimant alleged negligence, suitability, failure to diversify, misrepresentation, breach of contract, and failure to supervise. The dispute involved the purchase and/or sale of unspecified securities in Claimant's Retirement Account.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$164,415.00, unspecified general damages, interest, attorney's fees, and costs.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and that all costs be assessed to the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On January 13, 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.

On March 4, 2003, Respondent'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, 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) The parties shall bear their respective costs, including attorney's fees.
- 3) 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
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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, Inc. is a party and the following fees are assessed:

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:

Hearing Dates, March 9-12, 2004 adjournment requested by Claimant	= \$ 1,125.00
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The Panel waived the \$1,125.00 adjournment fee.

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/Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Chair @ \$450.00/session = \$ 900.00

Pre-hearing conferences: August 12, 2003 1 session
February 19, 2004 1 session

Three (3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 3,375.00

Pre-hearing conferences: July 1, 2003 1 session
January 14, 2004 1 session
March 2, 2004 1 session

Eight (8) Hearing sessions @ \$1,125.00/session = \$ 9,000.00

Hearings: May 18, 2004 2 sessions
May 19, 2004 2 sessions
May 20, 2004 2 sessions
May 21, 2004 2 sessions

Total Forum Fees = \$13,275.00

1. The Panel assessed \$6,075.00 of the forum fees to Claimant.
2. The Panel assessed \$7,200.00 of the forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,075.00
Total Fees	= \$ 6,375.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 4,950.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$12,400.00
Less payments	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 7,200.00

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

Charles E. Riggs, JD

Public Arbitrator, Presiding Chair

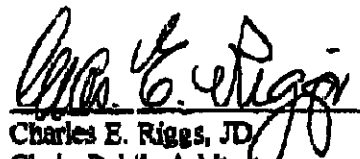
James M. Magner

Public Arbitrator

Alvin B. Asher

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Charles E. Riggs, JD
Chair, Public Arbitrator

JUNE 2, 2004
Signature Date

James M. Magner
Public Arbitrator

Signature Date

Alvin B. Asher
Non-Public Arbitrator

Signature Date

June 3, 2004
Date of Service

ARBITRATION PANEL

Charles E. Riggs, JD	Public Arbitrator, Presiding Chair
James M. Magner	Public Arbitrator
Alvin B. Asher	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Charles E. Riggs, JD
Chair, Public Arbitrator

Signature Date

James M. Magner
Public Arbitrator

Signature Date

Alvin B. Asher
Alvin B. Asher
Non-Public Arbitrator
INDUSTRIAL

06/02/04
Signature Date

June 3, 2004
Date of Service

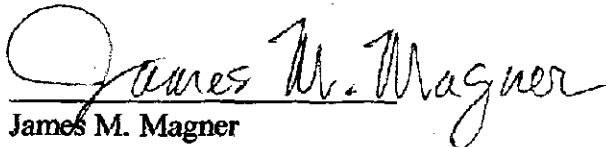
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Charles E. Riggs, JD	-	Public Arbitrator, Presiding Chair
James M. Magner	-	Public Arbitrator
Alvin B. Asher	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Charles E. Riggs, JD
Chair, Public Arbitrator

Signature Date



James M. Magner
Public Arbitrator

6-3-04

Signature Date

Alvin B. Asher
Non-Public Arbitrator

Signature Date

June 3, 2004

Date of Service