

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

C. Ruby Faverio

v.

02-07452

Denver, Colorado

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
Wells Fargo Brokerage Services, LLC,
and Gregory C. Richardson

Nature of Dispute: Customer v. Members and Associated Person

REPRESENTATION OF PARTIES

C. Ruby Faverio ("**Claimant**") was represented by Thomas A. Swett, Esq., of Hurth, Sisk, Yeager & Blakemore, LLP, Boulder, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**") and Gregory C. Richardson ("**Richardson**"), for the time period he was employed at Merrill Lynch, were represented by A. Thomas Tenenbaum, Esq., of Tenenbaum & Kreye, LLP, Englewood, Colorado.

Wells Fargo Brokerage Services, LLC ("**Wells Fargo**") and Gregory C. Richardson ("**Richardson**"), for the time period he was employed at Wells Fargo, were represented by Robert T. Sullwold, Esq., of Sullwold & Hughes, San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about December 6, 2002. Submission Agreement of Claimant was signed on or about November 29, 2002.

A Joint Statement of Answer was filed by Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Gregory C. Richardson on or about February 28, 2003. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about February 3, 2003. Submission Agreement of Respondent Gregory C. Richardson was signed on or about February 6, 2003.

A Joint Statement of Answer was filed by Respondents Wells Fargo Brokerage Services, LLC and Gregory C. Richardson on or about February 23, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: suitability, negligence, failure to supervise, misrepresentations, and breach of fiduciary duty. The causes of action related to Claimant's allegation that Respondent Richardson did not inquire about her risk tolerance and invested her holdings primarily in high-tech, telecommunication and internet stocks, including: Broadcom Corp, Cisco Systems, Microsoft Corp, Nortel Networks Corp, Sun Microsystems Inc., Qwest Communications and General Electric. Claimant alleged that Respondents did not diversify her portfolio or suggest different investment strategies that would have been more appropriate given her age, investment objectives, employment status and limited assets.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Gregory C. Richardson, for the time period he was employed at Merrill Lynch, denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by her own contributory negligence, lack of diligence or failure or want of care; Claimant assumed the risk of her alleged losses and all risks inherent in the investments at issue were fully disclosed to Claimant by Respondents; and Respondents did not fail to diversify Claimant's account, were not negligent, did not make any material misrepresentations, did not breach any fiduciary duty to Claimant and did not fail to use reasonable diligence.

Respondents Wells Fargo Brokerage Services, LLC and Gregory C. Richardson, for the time period he was employed at Wells Fargo Brokerage Services, LLC, denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant voluntarily assumed the risk of the loss in the investments for which she now complains; Claimant failed to exercise reasonable care and due diligence to protect herself from or to mitigate any damages that she may have sustained by reason of the matters alleged in the Statement of Claim; and any decline in the value of Claimant's securities was caused in whole or in part by market conditions and events outside the control of Respondents and Respondents' conduct thus was not the cause in fact or the proximate cause of the losses alleged by Claimant.

RELIEF REQUESTED

Claimant requested an award in the amount of \$97,200 in compensatory damages. In addition, Claimant requested interest, costs, attorney's fees, punitive damages, and any other relief the Panel deemed just and equitable.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Gregory C. Richardson requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondent Gregory C. Richardson requested that this matter be expunged from his permanent registration record maintained by the Central Registration Depository ("CRD").

Respondent Wells Fargo Brokerage Services, LLC requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Wells Fargo Brokerage Services, LLC did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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 originals remain on file with NASD Dispute Resolution ("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. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Wells Fargo Brokerage Services, LLC, and Gregory C. Richardson, are jointly and severally liable for and shall pay to Claimant, C. Ruby Faverio, the sum of Fifty Five Thousand Dollars and No Cents (\$55,000.00) as compensatory damages;
2. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Wells Fargo Brokerage Services, LLC, and Gregory C. Richardson, are jointly and severally liable for and shall pay to Claimant, C. Ruby Faverio, interest at the Colorado statutory rate from and including June 13, 2000, through and including date this Award is paid in full;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and requests for expungement, are denied with prejudice; and
4. 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 the non-refundable filing fee 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 events giving rise to the dispute. In this matter, the member firm are Merrill Lynch Pierce Fenner & Smith, Inc. and Wells Fargo Brokerage Services, LLC.

Member surcharge = \$ 1,100
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 1,700

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

One (1) Pre-hearing session with one arbitrator x \$ 450 = \$ 450

Pre-hearing conference: 03/01/2004 1 session

One (1) Pre-hearing session with Panel x \$ 750 = \$ 750

Pre-hearing conference: 08/13/2003 1 session

Six (6) Hearing sessions with Panel x \$ 750 = \$ 4,500

Hearing Dates: 03/29/2004 2 sessions
03/30/2004 2 sessions
03/31/2004 2 sessions

Total Forum Fees = \$ 5,700

The Arbitration Panel has assessed \$ 5,700 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., Wells Fargo Brokerage Services, LLC, and Gregory C. Richardson.

Fee Summary

Claimant, C. Ruby Faverio is liable for:

<u>Initial Filing Fee</u>	= \$ 225
<u>Total Fees</u>	= \$ 225
<u>Less payments</u>	= \$ 975
<u>Balance Refunded By NASD Dispute Resolution</u>	= \$ 750

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for:

<u>Member Fees</u>	= \$ 3,550
<u>Total Fees</u>	= \$ 3,550
<u>Less payments</u>	= \$ 3,550
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0

Respondent, Wells Fargo Brokerage Services, LLC, is liable for:

<u>Member Fees</u>	= \$ 3,550
<u>Total Fees</u>	= \$ 3,550
<u>Less payments</u>	= \$ 3,550
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Wells Fargo Brokerage Services, LLC and Gregory C. Richardson are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,700
<u>Total Fees</u>	= \$ 5,700
<u>Less payments</u>	= \$ 750
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,950

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

Gilbert L. McSwain, Esq. - Public Arbitrator, Presiding Chair
Bruce W. Brady, CPA - Public Arbitrator
Jonathan H. Larson, Esq.- Non-Public Arbitrator

Concurring Arbitrators:

Gilbert L. McSwain, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Bruce W. Brady, CPA
Public Arbitrator

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator


Signature Date

4/4/04
Date of Service (NASD use only)

ARBITRATION PANEL

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Bruce W. Brady, CPA - Public Arbitrator
Jonathan H. Larson, Esq. - Non-Public Arbitrator

Concurring Arbitrators:



Gilbert L. McSwain, Esq.
Public Arbitrator, Presiding Chair

4/14/04

Signature Date

Bruce W. Brady, CPA
Public Arbitrator

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

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Public Arbitrator

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

4/12/04
Signature Date

Signature Date

4/14/04
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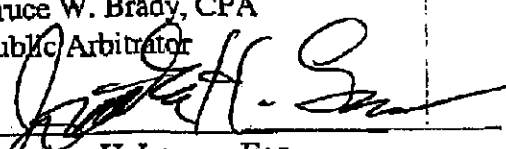
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