

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Emma H. Pendergrass and Emma H. Pendergrass IRA, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kenneth Lee Douglas Irvin, Respondents

Case Number: 02-07504

Hearing Site: San Francisco, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

James Jay Seltzer, Esq.
Law Offices of James Jay Seltzer
Emeryville, California

For Respondents:

Kenneth C. Mennemeier, Esq.
Mennemeier, Glassman & Stroud
Sacramento, California

CASE INFORMATION

Statement of Claim filed: December 11, 2002

Claimants' Uniform Submission Agreement signed: December 9, 2002

Joint Statement of Answer filed by Respondents: April 8, 2003

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

Respondent Kenneth Lee Douglas Irvin's Uniform Submission Agreement signed:
March 26, 2003

CASE SUMMARY

Claimants alleged violations of NASD Conduct Rule 2110, unsuitability, omissions and misrepresentations of material fact, negligent supervision, failure to supervise, violations of California Corporations Code §§ 25401 and 25504.1, negligence, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, common law fraud and elder abuse. Claimants' allegations involved Van Kampen Technology, Van Kampen Emerging Growth and Van Kampen Aggressive Growth mutual funds and other unspecified securities transactions.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$200,000.00, unspecified punitive damages, treble damages, interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent Kenneth Lee Douglas Irvin's registration records maintained by the NASD Central Registration Depository ("CRD") and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On January 12, 2003, Claimants and Claimants' 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 February 12, 2003, Respondents' counsel signed a Waiver Agreement on behalf of Respondents expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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. Claimants' claims are denied in their entirety.
2. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kenneth Lee Douglas Irvin are dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kenneth Lee Douglas Irvin's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Kenneth Lee Douglas Irvin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The parties shall bear their respective costs, including attorney's fees.
5. 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	= \$ 375.00
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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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

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:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: July 23, 2003 1 session	

Eight (8) Hearing sessions @ \$1,200/session	= \$ 9,600.00
Hearings: March 17, 2004 2 sessions	
March 18, 2004 3 sessions	
March 19, 2004 3 sessions	

Total Forum Fees	= \$10,800.00
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1. The Panel assessed \$5,400.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$5,400.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 5,400.00
Total Fees	= \$ 5,775.00
<u>Less payments</u>	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

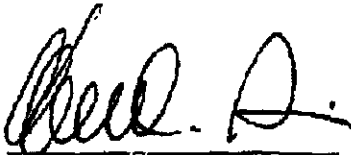
Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 5,400.00
Total Fees	= \$12,400.00
<u>Less payments</u>	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 5,400.00

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

Edwin C. Shiver, Esq.	-	Public Arbitrator, Presiding Chair
Harry B. Endsley	-	Public Arbitrator
Linda L. Blackwell	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Edwin C. Shiver, Esq.
Chair, Public Arbitrator

03/22/2004
Signature Date

Harry B. Endsley
Public Arbitrator

Signature Date

Linda L. Blackwell
Non-Public Arbitrator

Signature Date

3/22/04
Date of Service

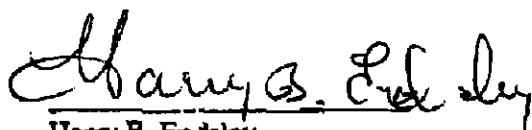
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Edwin C. Shiver, Esq.
Chair, Public Arbitrator

Signature Date



Harry B. Endsley
Public Arbitrator

3-22-2004

Signature Date

Linda L. Blackwell
Non-Public Arbitrator

Signature Date

3/22/04

Date of Service

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Chair, Public Arbitrator

Signature Date

Harry B. Endsley
Public Arbitrator

Signature Date



Linda L. Blackwell
Non-Public Arbitrator

3-22-04
Signature Date

3/22/04
Date of Service