

**NASD DISPUTE RESOLUTION AWARD**

**NASD DISPUTE RESOLUTION**

CASE: 02-07691

Marsha Hockenberry IRA FBO Marsha Hockenberry, Claimant v. Merrill Lynch Pierce Fenner & Smith, Inc., Respondent.

**ATTORNEYS:**

For Claimant, Marsha Hockenberry IRA FBO Marsha Hockenberry, ("Claimant"), appeared Marc S. Koplik, Esq., of Marc S. Koplik & Associates, New York, NY.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., ("Respondent"), appeared its in-house counsel Yosef Sinensky, Esq., New York, NY.

**NATURE OF DISPUTE:** Customer v. Member

**DATE FILED:** December 20, 2002

**CASE SUMMARY:** Claimant alleged that Respondent sold, without prior discussion or authorization, positions in an annuity and invested those proceeds as well as additional funds in three unsuitable proprietary unit investment trusts branded as Merrill Lynch Defined Asset Funds which included Merrill Lynch Boomer Growth, Inc., the Merrill Lynch Core Holdings Portfolio 2000, and the Merrill Lynch S&P Market Cap Plus 2000. Claimant additionally alleged that Respondent breached its fiduciary duty, and omitted and misrepresented material facts regarding her investments. Claimant maintained that due to Respondent's action, her IRA suffered financial losses.

**ARBITRATOR'S REPORT:** Claimant did not make an informed decision to purchase the UITs at issue, and cannot be expected to analyze their suitability after the fact, or to understand her right to seek rescission of an unauthorized trade. Attorney's fees are granted because Respondent has unreasonably refused to comply with reasonable document requests, and unnecessarily complicated this simplified arbitration.

**Claim Data**

Claim: \$20,766.00  
Interest: Unspecified  
Attorney Fees: Unspecified  
Filing Fees: \$425.00  
Other: Unspecified

**Award Data**

Award: \$20,766.00  
Interest: \$.00  
Attorney Fees: \$2,500.00  
Filing Fees: \$425.00  
Other: \$.00

**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable for and shall pay to the Claimant \$20,766.00. 2) Respondent is liable for and shall pay to the Claimant \$2,500.00 in attorney fees. 3) All requests for interest are denied. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 6) Respondent is liable for and shall pay to the Claimant \$425.00 as reimbursement of the filing fee.

**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.


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**ARBITRATOR**

Deborah Sherman, Esq. - Sole Public Arbitrator

**AFFIRMATION**

I, Deborah Sherman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Deborah Sherman, Esq.

4/21/04  
Signature Date

April 29, 2004

Date of Service (For NASD-DR office use only)