

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Deanna S. Schmidt

v.

02-07771

Minneapolis, Minnesota

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and Craig M. Jarvis

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Deanna S. Schmidt ("Claimant") was represented by Vincent D. Louwagie, Esq., of Anthony Ostlund & Baer, P.A., Minneapolis, Minnesota.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Craig M. Jarvis ("Jarvis"), hereinafter referred to as ("Respondents") were represented by James K. Langdon, Esq., of Dorsey & Whitney LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about December 23, 2002. Submission Agreement of Claimant Deanna S. Schmidt was signed on or about December 11, 2002.

A Joint Statement of Answer was filed by Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis on or about March 14, 2003. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about February 3, 2003 by Bryan Reyhani, Vice President and General Counsel. Submission Agreement of Respondent Craig M. Jarvis was signed on or about March 17, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: violations of Minnesota and federal securities laws, negligence, vicarious liability, failure to supervise, consumer fraud, and breach of fiduciary duty. The causes of action related to Claimant's allegation that Respondents implemented an investment strategy that was comprised of aggressive growth in both stocks and mutual funds. Claimant argued that given her investment objectives and experience in the market, this strategy was unsuitable.

Claimant alleged that Respondent Jarvis invested her whole portfolio into Microsoft common stock, and this lack of diversification lead to heavy losses in her account.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant's knowledge of her investments and failure to raise any concerns constitutes a waiver of any claim and estops her from challenging the appropriateness of investments she knew of and directed; Claimant knowingly assumed the risk of her investment decisions in exchange for a higher potential rate of return; Claimant cannot recover against Merrill Lynch because it maintained an adequate and reasonable system of supervision and control of its registered representatives and at all times acted in good faith, in accordance with industry standards of conduct and in compliance with all applicable securities laws and regulations; and Claimant's losses were caused by her own investment decisions and general stock market movements for which Respondents are not responsible.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in an amount to be determined at the hearing. In addition Claimant had requested an award of lost opportunity damages, costs, attorneys' fees, interest, punitive damages and for such other relief that the Panel deemed just and equitable. At the arbitration, Claimant requested an award in the amount of \$45,954 in compensatory damages.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that the Panel include in its award a directive to expunge any and all references to this matter from the permanent registration records maintained by the Central Registration Depository.

OTHER ISSUES CONSIDERED & DECIDED

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. and Craig M. Jarvis, are jointly and severally liable for and shall pay to Claimant, Deanna S. Schmidt, the sum of Forty Five

Thousand Nine Hundred and Fifty Four Dollars and No Cents (\$45,954.00) in compensatory damages;

2. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis, are jointly and severally liable for and shall pay to Claimant, Deanna S. Schmidt, interest on the above stated sum at the Minnesota statutory rate from and including December 24, 2002 until and including the date this award is paid in full;
3. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis, are jointly and severally liable for and shall pay to Claimant, Deanna S. Schmidt, the sum of Twenty Four Thousand Eight Hundred Dollars and No Cents (\$24,800.00) in attorneys' fees pursuant to Minnesota statute MS § 80A.23 ;
4. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis, are jointly and severally liable for and shall pay to Claimant, Deanna S. Schmidt, the sum of Two Thousand Two Hundred Dollars and No Cents (\$2,200.00) in costs pursuant to Minnesota statute MS § 80A.23;
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief, including punitive damages, by any party hereto are denied with prejudice; and
6. 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 fees for each claim:

Initial claim filing fee = \$ 250

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, Inc.

Member surcharge	= \$ 1,500
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,200

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

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

Pre-hearing conference: 07/18/2003 1 session

One (1) Pre-hearing session with Panel x \$ 1,000 = \$ 1,000

Pre-hearing conference: 06/16/2003 1 session

Three (3) Hearing sessions x \$ 1,000 = \$ 3,000

Hearing Dates: 09/17/2003 2 sessions
09/18/2003 1 session

Total Forum Fees = \$ 4,450

The Arbitration Panel has assessed \$ 2,225 of the forum fees to Deanna S. Schmidt.

The Arbitration Panel has assessed \$ 2,225 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis.

Fee Summary

Claimant, Deanna S. Schmidt, is liable for:

Initial Filing Fee	= \$ 250
<u>Forum Fees</u>	= \$ 2,225
Total Fees	= \$ 2,475
<u>Less payments</u>	= \$ 1,250
Balance Due NASD Dispute Resolution	= \$ 1,225

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

Member Fees	= \$ 4,450
Total Fees	= \$ 4,450
Less payments	= \$ 4,450
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis, are jointly and severally liable for:

Forum Fees	= \$ 2,225
Total Fees	= \$ 2,225
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 2,225

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

ARBITRATION PANEL

James A. Lundberg, Esq. - Public Arbitrator, Presiding Chair
Emily F. Seesel, Esq. - Public Arbitrator
Donald F. James - Non-Public Arbitrator

Concurring Arbitrators:

James A. Lundberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Emily F. Seesel, Esq.
Public Arbitrator

Signature Date

Donald F. James
Non-Public Arbitrator

Signature Date

Date of Service

Member Fees	= \$ 4,450
Total Fees	= \$ 4,450
Less payments	= \$ 4,450
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis, are jointly and severally liable for:

Forum Fees	= \$ 2,225
Total Fees	= \$ 2,225
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 2,225

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Emily F. Seesel, Esq. - Public Arbitrator
Donald F. James - Non-Public Arbitrator

Concurring Arbitrators:


James A. Lundberg, Esq.
Public Arbitrator, Presiding Chair

10/9/2003
Signature Date

Emily F. Seesel, Esq.
Public Arbitrator

Signature Date

Donald F. James
Non-Public Arbitrator

Signature Date

10/20/03
Date of Service

Member Fees	= \$4,450
Total Fees	= \$4,450
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Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Craig M. Jarvis, are jointly and severally liable for:

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Emily F. Seessel, Esq. - Public Arbitrator
Donald F. James - Non-Public Arbitrator

Concurring Arbitrators:

James A. Lundberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Emily F. Seessel
Emily F. Seessel, Esq.
Public Arbitrator

Oct. 13 2003
Signature Date

Donald F. James
Non-Public Arbitrator

Signature Date

10/20/03
Date of Service

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Total Fees	= \$ 4,450
Less payments	= \$ 4,450
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Emily F. Seesel, Esq. - Public Arbitrator
Donald F. James - Non-Public Arbitrator

Concurring Arbitrators:

James A. Lundberg, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Emily F. Seesel, Esq.
Public Arbitrator

Signature Date

Donald F. James
Non-Public Arbitrator

10-13-03
Signature Date

10/20/03
Date of Service