

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Suzanne Podesta,

Claimant,

And

Merrill Lynch, Pierce, Fenner & Smith, Incorporated,
Randolph Moore and Steven T. Strong,

02-07818
Phoenix, Arizona

Respondents.

Nature of Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

Claimant Suzanne Podesta was represented by Mark D. Lammers of Anson, Lammers & Barkley, P.C., Tucson, Arizona.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") and Steven T. Strong were represented by Ed Hendricks, Jr. of Meyer, Hendricks & Bivens, P.A., Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about December 23, 2002.

The Statement of Answer was filed by Respondents Merrill Lynch and Steven Strong on or about March 21, 2003. The Submission Agreement of Respondent Steven Strong was signed on or about April 4, 2003 by Steven Strong. The Submission Agreement of Respondent Merrill Lynch was signed on or about April 8, 2003 by Merrill Lynch.

CASE SUMMARY

Claimant's Statement of Claim alleges claims against Respondent Strong for breach of contract, negligence, breach of fiduciary duty, and unsuitability. Claimant also alleges that Respondent Merrill Lynch failed to supervise Strong.

Respondents denied the allegations in the Statement of Claim and asserted several affirmative defenses to those allegations.

RELIEF REQUESTED

Claimant requested an award in the amount of \$188,000 in compensatory damages, punitive damages, and attorneys' fees and costs.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees. Respondent Strong requested the expungement of all reference to the above-captioned arbitration from Respondent Strong's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

The parties filed with the NASD a Stipulation to Dismiss and to Expunge the Registered Representative's Record along with this proposed Stipulated Award. Also, Claimant filed the affidavit set forth below related to the claims against Respondents Strong and Merrill Lynch. The Affidavit reflects the following:

1. My name is Suzanne Podesta.
2. I opened my securities accounts in 1996 at Merrill Lynch's office in Tucson, Arizona.
3. The registered representative I dealt with at Merrill Lynch was Steven Strong.
4. I filed a claim against Strong and Merrill Lynch on December 23, 2002. I claimed that Strong recommended that I invest \$210,000 in the Merrill Lynch Internet Strategies Fund, which was allegedly unsuitable. I acknowledge, however, that Strong recommended only \$10,000 in that Fund and I chose to invest another \$200,000. He did not recommend the \$200,000 investment. Moreover, the \$10,000 was less than 10% of my portfolio with Merrill Lynch at that time and there was nothing improper about that recommendation. Strong informed me that the Merrill Lynch Fund invested in the technology sector and included high risk stocks, which were speculative. I considered this information and decided to invest. I also decided to invest the additional \$200,000 on my own.
5. After investing in that Fund, Merrill Lynch sent me the prospectus and I received confirmation of the purchase of shares in the Fund. Those documents stated:
 - "[T]he value of the Fund's investments – and therefore the value of Fund shares – may fluctuate." [Prospectus, at 4, a copy of which is attached at Tab B.]
 - "If the value of the Fund's investments goes down, you may lose money." [*Id.*]

- “[E]quity securities issued by [Internet and Internet related companies] historically have been extremely volatile. Volatility may increase the risk that the securities may lose value.” *[Id.]*
 - “[T]he Fund [may be] more vulnerable to price changes of stocks of Internet and Internet related companies, which are extremely volatile, than a more broadly diversified mutual fund.” *[Id. at 5.]*
 - The Fund is not an appropriate investment unless an investor is (1) “looking to invest in a portfolio comprised primarily of equity securities of Internet and Internet related companies and [is] willing to accept the risks associated with investment in those industries” and (2) “willing to accept the extraordinarily high volatility (both up and down) that is commonplace in equity securities of Internet and Internet related companies.” *[Id. at 5-6.]*
 - “The Fund should not be considered a balanced investment program by itself.” *[Id. at 17.]*
 - “[M]any Internet and Internet related companies operate at substantial losses with no prospect for profit in the foreseeable future. For [this] reason[], the Fund and its investments may be considered speculative.” *[Id. at 18.]*
 - “Internet and Internet related companies may be subject to more abrupt and erratic price movements than the stock market as a whole.” *[Id.]*
 - “The responsibility for failure to cancel an existing open order rests with the client. Clients should be particularly mindful of this when entering a substitute order. Any transactions which result from the execution of any orders which the client has not instructed [the broker] to cancel will be entered in the client’s account.” *[Confirmation, at ¶ 7.]*
 - “[The] confirmation shall be deemed conclusive if not objected to in 10 days.” *[Id. at ¶ 9.]*
6. I also received account statements of activity in my accounts, including the Fund’s losses and gains. I chose to continue to hold interest in the Fund.

7. Merrill Lynch also sent me the prospectus for the Global Fund into which the Fund merged. I received confirmation of that merger from Merrill Lynch. I decided to hold that investment as well.
8. The \$10,000 that Strong recommended that I invest in the Fund was in line with my financial situation, investment objectives, and stated risk tolerance. None of the investments recommended either for sale or purchase by Strong were unsuitable given my financial situation and other relevant circumstances. While Mr. Strong was my registered representative, I received monthly account statements and individual trade confirmations for each transaction that took place in my accounts as well as the amount of commissions I was charged for each transaction. I was not charged excessive commissions nor were the stocks in my account excessively traded.
9. Although I may have lost some monies in my accounts while Strong was my registered representative, as most people did who were invested in the stock market during this period of time, these losses were not the fault of Steven Strong. I followed my investments carefully and understood and accepted the risks involved with my investment strategy. I understood completely that Mr. Strong could not guarantee success in the stock market.
10. Although my Statement of Claim in this matter alleged breach of contract, negligence, breach of fiduciary duty, and unsuitability, upon further investigation, I do not believe Steven Strong engaged in any of those allegations, but rather acted in a competent and forthright manner as my registered representative for the approximately seven years he advised me at Merrill Lynch.
11. The Statement of Claim and allegations contained therein are without factual basis.
12. The Statement of Claim fails to state a claim upon which relief can be granted and is frivolous.
13. At no time did Steven Strong breach his fiduciary duties to me.
14. At no time did Steven Strong make unsuitable recommendations.
15. Permitting the information alleged in the Statement of Claim to remain in the CRD system for Steven Strong would be harmful to his reputation and status in the securities business considering the nature of the information and because it is just and equitable I have directed my attorney to dismiss all claims against Mr. Strong in this matter and stipulate that all information be expunged from Mr. Strong's CRD record including all references to the above captioned arbitration from Mr. Strong's registration records maintained by the NASD Central Registration Depository.

16. The allegations I made in my Statement of Claim have caused negative information to appear on Mr. Strong's CRD. This information is harmful to Mr. Strong's reputation and status as a financial consultant in the securities industry. As such, I have directed my attorney to dismiss all claims against Mr. Strong in this matter and stipulate that all this information, including all references to this arbitration, be expunged from Mr. Strong's registration record maintained by the NASD Central Registration Depository.

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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the proposed Stipulated Award and the record in this matter, the Panel has decided in full and final resolution of the issue submitted for determination as follows:

1. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Steven Strong's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Steven Strong must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party, particularly those asserted by Suzanne Podesta against Respondents, are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear their own costs and expenses 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 or collect the non-refundable filing fees for each claim:

Initial claim filing fee

= \$300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): July 16, 2003 1 session	
Total Forum Fees	= \$1,125.00

The Arbitration Panel has assessed \$562.50 of the forum fees to Suzanne Podesta.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Steven T. Strong.

Fee Summary

Claimant, Suzanne Podesta, shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$1,425.00
Balance refunded by NASD Dispute Resolution	= \$ 562.50

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, shall be and hereby is liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Respondents, Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Steven T. Strong shall be and hereby are jointly and severally liable for:

<u>Fee Type</u>	= \$562.50
Balance Due NASD Dispute Resolution	= \$562.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Robert F. Oberstein - Public Arbitrator, Presiding Chair
Darrell P. Ladmirault - Public Arbitrator
Leon G. Mackey - Non-Public Arbitrator

Concurring Arbitrators:

Robert F. Oberstein
Robert F. Oberstein
Public Arbitrator, Presiding Chair

3/17/04
Signature Date

Darrell P. Ladmirault
Darrell P. Ladmirault
Public Arbitrator

Signature Date

Leon G. Mackey
Leon G. Mackey
Non-Public Arbitrator

Signature Date

ETA

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Arbitration No. 02-07818
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Respondents, Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Steven T. Strong shall be and hereby are jointly and severally liable for:

Fee Type

Balance Due NASD Dispute Resolution

= \$562.50

= \$562.50

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Darrell P. Ladmirault - Public Arbitrator
Leon G. Mackey - Non-Public Arbitrator

Concurring Arbitrators:

Robert F. Oberstein
Public Arbitrator, Presiding Chair

Darrell P. Ladmirault
Darrell P. Ladmirault
Public Arbitrator

Signature Date

3/18/04
Signature Date

Leon G. Mackey
Non-Public Arbitrator

Signature Date

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Arbitration No. 02-07818
Stipulated Award Page 7 of 7

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Steven T. Strong shall be and hereby are jointly and severally liable for:

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Balance Due NASD Dispute Resolution	= \$562.50

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Darrell P. Ladmirault - Public Arbitrator
Leon G. Mackey -- Non-Public Arbitrator

Concurring Arbitrators:

Robert F. Oberstein
Public Arbitrator, Presiding Chair

Signature Date

Darrell P. Ladmirault
Public Arbitrator

Signature Date



Leon G. Mackey
Non-Public Arbitrator

March 17, 2004
Signature Date