

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Harold McNeill

Case Number: 02-07876

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Raleigh, NC

Nature of the Dispute: Customer v. Member.

REPRESENTATION OF PARTIES

Claimant, Harold McNeill, hereinafter referred to as "Claimant", was represented by L. Bruce McDaniel, Esq., McDaniel & Anderson, LLP, Raleigh, North Carolina.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to a "Respondent", was represented by Drew Dropkin, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on December 31, 2002.

Amendment to Statement of Claim filed on August 25, 2003.

Claimant signed the Uniform Submission Agreement on December 26, 2002.

Statement of Answer filed by Respondent on February 27, 2003.

Amended Statement of Answer filed by Respondent on April 15, 2004.

A representative of Respondent signed the Uniform Submission Agreement on February 27, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of fiduciary duty, fraud, unauthorized trading, failure to supervise, false statements and failure to disclose material information, federal securities violations, state securities violations, negligence, and suitability. The causes of action relate to the purchase and sale of a Merrill Lynch insurance annuity.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred by the doctrines of laches, unclean hands, and estoppel; waiver; assumption of the risk; failure to mitigate damages; contributory negligence; authorization; ratification; Claimant's claims are barred by the doctrine of set off; and failure to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 73,075.63
Punitive Damages	\$ 100,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety and that forum fees be borne by the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on the merits, Respondent made an oral Motion for Directed Verdict, which the Arbitration Panel (the "Panel") denied.

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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claims are denied in their entirety;
2. That the parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. That any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: January 8, 2004 1 session	
Four (4) Hearing sessions @ \$ 1,125.00	= \$ 4,500.00
Hearing Dates: May 4, 2004 2 sessions	
May 5, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 5,625.00

1. The Panel has assessed \$ 4,218.75 of the forum fees to Claimant.
2. The Panel has assessed \$ 1,406.25 of the forum fees to Respondent.

Fee Summary

1. Claimant is assessed and shall pay:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,218.75
Total Fees	= \$ 4,518.75
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,093.75
2. Respondent is assessed and shall pay:	
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,406.25
Total Fees	= \$ 6,606.25
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,406.25

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

ARBITRATION PANEL

Larry A. Feldman	- Public Arbitrator, Presiding Chairperson
Leonard E. Benade	- Public Arbitrator, Panelist
James W. A. Black	- Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures



Harry A. Feldman
Public Arbitrator, Presiding Chairperson

MAY 11th 2004

Signature Date

Leonard E. Benade
Public Arbitrator, Panelist

Signature Date

James W. A. Black
Non-Public Arbitrator, Panelist

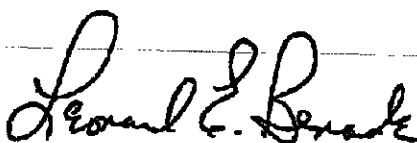
Signature Date

May 12, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Larry A. Feldman
Public Arbitrator, Presiding Chairperson

Signature Date



Leonard E. Benade
Public Arbitrator, Panelist

5/10/04
Signature Date

James W. A. Black
Non-Public Arbitrator, Panelist

Signature Date

May 12, 2004
Date of Service (For NASD Dispute Resolution office use only)

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