

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kimberly C. Marcucci, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Marsha Kemppainen, Respondents

Case Number: 03-00244

Hearing Site: Anchorage, Alaska

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

REPRESENTATION OF PARTIES

For Claimant:

Charles Flynn, Esq.
Burr, Pease & Kurtz
Anchorage, Alaska

For Respondents:

Dennis K. Egan, Esq.
Butzel Long
Bloomfield Hills, Michigan

CASE INFORMATION

Statement of Claim filed: January 9, 2003

Claimant's Uniform Submission Agreement signed: April 18, 2003

Joint Statement of Answer filed by Respondents: April 7, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: March 17, 2003

Respondent Marsha A. Kemppainen's Uniform Submission Agreement signed: August 25, 2003

CASE SUMMARY

Claimant alleged unsuitability, violation of NASD and NYSE rules and state and federal laws, failure to supervise, violation of duty to exercise reasonable care, breach of fiduciary duty, common law fraud, and negligence. Claimant's allegations involved various unspecified securities, including common stock and mutual funds.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, unspecified punitive damages, interest and costs, including attorney's fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

On October 28, 2003, Claimant filed a Motion for Sanctions against Respondents. On November 17, 2003, the Panel denied the motion.

On December 15, 2003, Claimant renewed her Motion for Sanctions against Respondents. On January 16, 2004, the Panel granted the motion and ordered Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., to pay sanctions of \$2,000.00 per day from the date of November 28, 2003 until Monday January 19, 2004, or until the date Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Compliance Manual was produced, whichever is later.

On January 23, 2004, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. filed a Motion for Reconsideration of Discovery Sanctions. The motion was heard during the hearing. The Panel hereby modifies its order of January 16, 2004, as follows: Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., is hereby ordered to pay sanctions of \$52,000.00 (\$1,000.00 per day from the date of November 28, 2003 until Monday January 19, 2004, a total of 52 days).

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. Respondents are jointly and severally liable to and shall pay Claimant the sum of \$40,000.00 in compensatory damages.
2. Claimant's claim for punitive damages is denied.
3. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant \$52,000.00 in sanctions.
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	= \$ 250.00
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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	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

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:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$ 2,000.00
Pre-hearing conferences:	
August 18, 2003	1 session
January 16, 2004	1 session
Six (6) Hearing sessions @ \$1,000.00/session	= \$ 6,000.00
Hearings:	
January 27, 2004	2 sessions
January 28, 2004	2 sessions
January 29, 2004	2 sessions
Total Forum Fees	= \$ 8,000.00

The Panel assessed \$8,000.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$(1,250.00)</u>
Refund Due from NASD Dispute Resolution	= \$(1,000.00)

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

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$ 8,000.00</u>
Total Fees	= \$12,450.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,000.00

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

James Rand Carr	-	Public Arbitrator, Presiding Chair
Glenda L. Rhodes, CPA	-	Public Arbitrator
Judith A. Cochrane	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James Rand Carr
Chair, Public Arbitrator

Feb 2, 2004
Signature Date

Glenda L. Rhodes, CPA
Public Arbitrator

Signature Date

Judith A. Cochrane
Non-Public Arbitrator

Signature Date

2/3/04
Date of Service

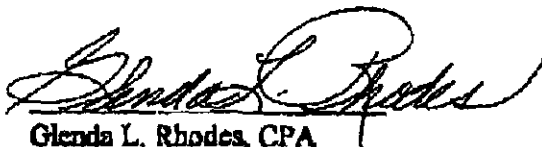
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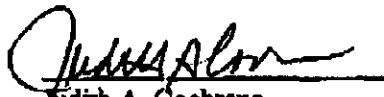
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Date of Service