

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimant

John M. Kendall

v.

Case Number: 03-00741

Minneapolis, Minnesota

Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Jason Bo-Alan Beckman, and
Matthew Howard Engen

Nature of Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

John M. Kendall ("Claimant") was represented by Jon M. Hopeman, Esq. and Eric J. Riensche, Esq., Felhaber, Larson, Fenlon & Vogt, P.A., Minneapolis, Minnesota.

Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Jason Bo-Alan Beckman ("Beckman"), and Matthew Howard Engen ("Engen"), hereinafter referred to as "Respondents", were represented by James K. Langdon II, Esq. and John Rock, Esq., Dorsey & Whitney LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about January 27, 2003. Submission Agreement of Claimant was signed on or about January 13, 2003.

Statement of Answer was filed jointly by Respondents on or about April 15, 2003. Submission Agreement of Merrill Lynch was signed on or about March 5, 2003. Submission Agreement of Beckman was signed on or about April 12, 2003. Submission Agreement of Engen was signed on or about April 11, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: suitability, breach of fiduciary duty, negligence, negligent hiring, retention, and supervision, and breach of contract. The causes of action related to Respondents' recommendation of the \$240,000 purchase of "C" shares of a mutual fund named Merrill Lynch Focus Twenty, ("Focus 20"), which Claimant asserted was a non-diversified fund.

Claimant alleged that since Merrill Lynch was the issuer, underwriter, and manager of the Merrill Lynch Focus Twenty, Merrill Lynch had a vested financial interest in recommending the Focus Twenty. Claimant stated that this mutual fund was unsuitable given his investment goals and investment experience.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Respondents behavior and advice was appropriate at all times and in all respects; given Claimant's net worth, objectives, and level of knowledge, Focus 20 was a suitable investment; Respondents provided Claimant with information necessary to make informed decisions regarding his investments; the majority of Claimant's losses came after he complained about the funds loss in value and Claimant remained in Focus Twenty for nineteen months after his first complaint; and Claimant failed to mitigate his damages, and as such is responsible for most of the losses.

RELIEF REQUESTED

Claimant requested an award in the amount of \$200,435.85 in compensatory damages. In addition, Claimant requested \$100,000 in punitive damages, plus interest, costs, attorney's fees and any other relief that the Panel deemed just and equitable.

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 this matter be expunged from Respondents' Jason Bo-Alan Beckman's and Matthew Howard Engen's permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing, the Parties fully and finally settled all claims by and between them. As part of their settlement agreement, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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 and the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators orders as follows:

1. Claimant's claims, each and all are hereby dismissed with prejudice in their entirety;
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Jason Bo-Alan Beckman's and Respondent Matthew Howard Engen'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 Jason Bo-Alan Beckman and Respondent Matthew Howard Engen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
4. 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 fee 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 persons 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 = \$ 1,700.00
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 with Panel x \$ 1,125.00 = \$ 1,125.00

Pre-hearing conference: 09/26/2003 1 session

Total Forum Fees = \$ 1,125.00

The Arbitration Panel has assessed \$ 562.50 of the forum fees to John M. Kendall.

The Arbitration Panel has assessed \$ 562.50 of the forum fees jointly and severally to Merrill Lynch, Pierce Fenner & Smith, Inc., Jason Bo-Alan Beckman, and Matthew Howard Engen.

Fee Summary

Claimant, John M. Kendall 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 From NASD Dispute Resolution	= \$ 562.50

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

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

Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc., Jason Bo-Alan Beckman, and Matthew Howard Engen are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Robert R. Biglow - Public Arbitrator, Presiding Chair
Carol A. Ludington - Public Arbitrator
David A. Peterson - Non-Public Arbitrator

Concurring Arbitrators:

Robert R. Biglow
Public Arbitrator, Presiding Chair

Signature Date

Carol A. Ludington
Public Arbitrator

Signature Date

David A. Peterson
Non-Public Arbitrator

Signature Date

5/21/04
Date of Service (NASD use only)

ARBITRATION PANEL

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Carol A. Ludington - Public Arbitrator
David A. Peterson - Non-Public Arbitrator

Concurring Arbitrators:

Robert R. Biglow
Robert R. Biglow
Public Arbitrator, Presiding Chair

MAY 13, 004
Signature Date

Carol A. Ludington
Carol A. Ludington
Public Arbitrator

Signature Date

David A. Peterson
David A. Peterson
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

Carol A. Ludington
Carol A. Ludington
Public Arbitrator

Signature Date

5/17/04
Signature Date

David A. Peterson
Non-Public Arbitrator

Signature Date

5/21/04
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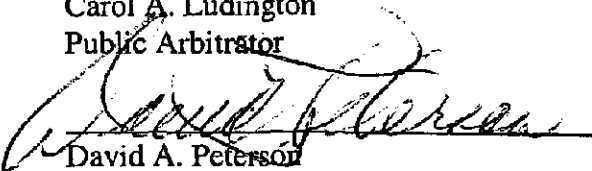
Concurring Arbitrators:

Robert R. Biglow
Public Arbitrator, Presiding Chair

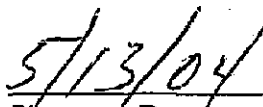
Signature Date

Carol A. Ludington
Public Arbitrator


Signature Date



David A. Peterson
Non-Public Arbitrator



Signature Date



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