

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

**John C. Chewning III, Virginia Chewning, Gary Thompson, and William Anderson, Claimants v.
Merrill Lynch, Pierce, Fenner & Smith, Inc. and Serafin Aquino, Respondents**

Case Number: 03-01336

Hearing Site: Seattle, Washington

Nature of the Dispute: Customers v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

**Carl J. Carlson, Esq.
Carlson & Fabish, P.S.
Seattle, Washington**

For Respondents:

**Curt Roy Hinline, Esq.
Bridgette M. Chicoine, Esq.
Dorsey & Whitney LLP
Seattle, Washington**

CASE INFORMATION

Statement of Claim received: February 24, 2003

Amended Statement of Claim received: January 16, 2004

Claimant John C. Chewning III's Uniform Submission Agreement signed: November 26, 2002

Claimant Virginia Chewning's Uniform Submission Agreement signed: November 26, 2002

Claimant Gary Thompson's Uniform Submission Agreement signed: January 28, 2003

Claimant William Anderson's Uniform Submission Agreement signed: January 3, 2003

Joint Statement of Answer filed by Respondents: June 23, 2003

**Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: May 15, 2003**

Respondent Serafin Aquino's Uniform Submission Agreement signed: July 11, 2003

CASE SUMMARY

Claimants' Initial and Amended Statements of Claim alleged unsuitability, breach of fiduciary duty, negligence, breach of contract, misrepresentation, and failure to supervise. The allegations involved the purchase and sale of various securities.

Respondents Statement of Answer denied the allegations of wrongdoing set forth in the Claimants' Initial Statement of Claim and asserted several affirmative defenses.

RELIEF REQUESTED

Claimants' Initial and Amended Statements of Claim requested compensatory damages in the amount of \$150,000.00 for John C. Chewning III, \$9,366.00 for Virginia Chewning, \$150,000.00 for Gary Thompson, and \$145,000.00 for William Anderson. Claimants' Initial and Amended Statements of Claim also requested punitive damages in the amount of \$250,000.00 for John C. Chewning III and Virginia Chewning, \$100,000.00 for Gary Thompson, and \$100,000.00 for William Anderson. Finally, the Claimants' Initial and Amended Statements of Claim requested pre-judgment interest at the rate of 12% and costs including attorney's fees.

Respondents' Answer requested dismissal of the Claimants' Initial Statement of Claim in its entirety, an award of costs including attorney's fees and requested the Panel to recommend that all references to this matter be expunged from Respondent Serafin Aquino's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On January 16, 2004, Claimants filed a Motion to Amend their Statement of Claim pursuant to NASD Code of Arbitration Procedure (the "Code") Rule 10328(c). The amendment was sought to add documents, obtained in discovery, to establish a further basis for the Claimants' breach of contract claim. Respondents did not oppose this request and the Panel approved the filing.

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 Merrill Lynch, Pierce, Fenner & Smith, Inc. and Serafin Aquino are jointly and severally liable to and shall pay Claimant John C. Chewning III the sum of \$60,000.00 in compensatory damages.
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and Serafin Aquino are jointly and severally liable to and shall pay Claimant Virginia Chewning the sum of \$6,100.00 in compensatory damages.
3. Claimants Gary Thompson's and William Anderson's claims are denied.
4. Claimants' request for punitive damages is denied.
5. The Parties shall bear their respective costs, including attorney's fees.
6. 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	= \$ 375.00
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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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

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 or the parties and the Panel. The following fees are assessed:

Four (4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 4,800.00
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Pre-hearing conferences:	November 6, 2003	1 session
	November 21, 2003	1 session
	January 6, 2004	1 session
	February 17, 2004	1 session

One (1) Pre-hearing conference session with the Chairperson @ \$450.00/session	= \$ 450.00
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Pre-hearing conference:	February 4, 2004	1 session
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Seventeen (17) Hearing sessions @ \$1,200.00/session	= \$20,400.00
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Hearings:	March 16, 2004	2 sessions
	March 17, 2004	2 sessions
	March 18, 2004	3 sessions
	March 19, 2004	3 sessions
	March 20, 2004	2 sessions
	April 21, 2004	2 sessions

April 22, 2004 2 sessions
April 24, 2004 1 session

Total Forum Fees **= \$25,650.00**

The Panel assessed \$25,650.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested copies of audio tapes: =\$ 105.00

Fee Summary

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Administrative Fees</u>	<u>= \$ 105.00</u>
Total Fees	= \$ 480.00
<u>Less payments</u>	<u>=(1,680.00)</u>
Refund Due Claimants	= \$(1,200.00)

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

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$25,650.00</u>
Total Fees	= \$32,650.00
<u>Less payments</u>	<u>= \$ (7,000.00)</u>
Balance Due NASD Dispute Resolution	= \$25,650.00

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

Bernard W. McNallen, Esq.
Sally Phillips Pasette
Bonny Kathleen Riggs

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



BERNARD W. MCNALLEN, ESQ.
Chair, Public Arbitrator

5/11/04
Signature Date

SALLY PHILLIPS PASETTE
Public Arbitrator

Signature Date

BONNY KATHLEEN RIGGS
Non-Public Arbitrator

Signature Date

5/11/04
Date of Service

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Sally Phillips Pasette
Bonny Kathleen Riggs

- **Public Arbitrator, Presiding Chair**
- **Public Arbitrator**
- **Non-Public Arbitrator**

Concurring Arbitrators' Signatures

BERNARD W. MCNALLEN, ESQ.
Chair, Public Arbitrator

Signature Date


SALLY PHILLIPS PASETTE
Public Arbitrator

5-10-04
Signature Date

BONNY KATHLEEN RIGGS
Non-Public Arbitrator

Signature Date

5/11/04
Date of Service

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Arbitration No. 03-01336
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Chair, Public Arbitrator

Signature Date

SALLY PHILLIPS PASETTE
Public Arbitrator

Signature Date


BONNY KATHLEEN RIGGS
Non-Public Arbitrator

5-11-2004
Signature Date

5/11/04
Date of Service