

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Shirley A. Merchant IRA, Shirley A. Merchant c/f Jennifer DeMarco, Shirley A. Merchant c/f Alison Grandjean, Shirley A. Merchant c/f Robert DeMarco, and Shirley A. Merchant c/f Luke Grandjean (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Kipp Hicks, and Larry Rose (Respondents)

Case Number: 03-01384

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customers v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Shirley A. Merchant IRA ("Merchant"), Shirley A. Merchant c/f Jennifer DeMarco ("Merchant c/f J. DeMarco"), Shirley A. Merchant c/f Alison Grandjean ("Merchant c/f A. Grandjean"), Shirley A. Merchant c/f Robert DeMarco ("Merchant c/f R. DeMarco"), and Shirley A. Merchant c/f Luke Grandjean ("Merchant c/f L. Grandjean") hereinafter collectively referred to as "Claimants" appeared *pro se*.

Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Kipp Hicks ("Hicks"), and Larry Rose ("Rose") hereinafter collectively referred to as "Respondents": Jonathan Wehle, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed: February 22, 2003.

Merchant signed the Uniform Submission Agreement: February 22, 2003.

Merchant c/f J. DeMarco, Merchant c/f A. Grandjean, Merchant c/f R. DeMarco, and Merchant c/f L. Grandjean signed the Uniform Submission Agreement: March 18, 2003.

Joint Statement of Answer filed by Respondents: July 28, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: July 28, 2003.

Hicks did not sign a Uniform Submission Agreement.

Rose signed the Uniform Submission Agreement on or about July 29, 2003.

**CASE SUMMARY**

Claimant in her Statement of Claim alleged that the Respondents made unsuitable investment recommendations in her accounts and those of which she was custodian. Claimants' claims involved mutual funds.

In their Answer Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Pursuant to the Statement of Claim, Claimant requested compensatory damages in the amount of \$37,000.00 for Merchant; \$5,000.00 for Merchant c/f J. DeMarco; \$4,000.00 for c/f A. Grandjean; \$2,000.00 for c/f R. DeMarco; and \$2,000.00 for c/f L. Grandjean.

Respondents requested that the Statement of Claim be dismissed in its entirety, denied the jurisdiction of the NASD over Hicks due to his time away from the securities industry, and requested that the Arbitration Panel issue an order directing that all references of this proceeding and the underlying complaint be expunged from the CRD records of Respondent Rose, that the cost of this proceeding be assessed against the Claimant, and that Respondents be awarded such other and further relief as is deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents and Claimants advised that on or about April 2, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement. On or about May 10, 2004, the parties informed NASD Dispute Resolution that they requested a Stipulated Award.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of such an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

- 1) Pursuant to the confidential settlement agreement reached between all parties, all claims against the Respondents Merrill Lynch, Hicks, and Rose are dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Kipp Hicks' and Respondent Larry Rose's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondents Kipp Hicks and Larry Rose must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) Each party shall bear its own costs and expenses associated with the above-referenced arbitration.

- 4) Any and all relief not specifically addressed herein is denied.

### **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	= \$175.00
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#### **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.

Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Forum fees associated with these proceedings are:

Pre-hearing conference session with the sole Arbitrator @ \$450.00/session	= \$450.00
Pre-hearing conference: December 9, 2003 1 session	
<u>Total Forum Fees</u>	<u>= \$450.00</u>

1. The Panel has assessed \$225.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$225.00 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 225.00
<u>Total Fees</u>	<u>= \$ 400.00</u>
<u>Less payments</u>	<u>= \$ 625.00</u>
Refund Paid to Claimants	= \$ 225.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$2,625.00
<u>Total Fees</u>	= \$2,625.00
<u>Less payments</u>	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**Parties' Signatures**

Shirley A. Merchant on behalf of:  
Shirley A. Merchant IRA  
Shirley A. Merchant c/f Jennifer DeMarco  
Shirley A. Merchant c/f Allison Grandjean  
Shirley A. Merchant c/f Robert DeMarco  
Shirley A. Merchant c/f Luke Grandjean  
Claimant

MAY 24 2004  
Date

**Merrill Lynch, Pierce, Fenner & Smith, Inc.**  
**Respondent**

Date \_\_\_\_\_

**Kipp Hicks**  
**Respondent**

Date \_\_\_\_\_

**Larry Rose**  
Respondent

Date \_\_\_\_\_

Parties' Signatures

Shirley A. Merchant on behalf of:  
Shirley A. Merchant IRA  
Shirley A. Merchant c/f Jennifer DeMarco  
Shirley A. Merchant c/f Alison Grandjean  
Shirley A. Merchant c/f Robert DeMarco  
Shirley A. Merchant c/f Luke Grandjean  
Claimant

\_\_\_\_\_  
Date



Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Respondent

6-9-04  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Kipp Hicks  
Respondent



Larry Rose  
Respondent

\_\_\_\_\_  
Date

6-7-04  
\_\_\_\_\_  
Date

Parties' Signatures

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Shirley A. Merchant on behalf of:  
Shirley A. Merchant IRA  
Shirley A. Merchant c/f Jennifer DeMarco  
Shirley A. Merchant c/f Alison Grandjean  
Shirley A. Merchant c/f Robert DeMarco  
Shirley A. Merchant c/f Luke Grandjean  
Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Respondent

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kipp Hicks  
Respondent

6-7-04  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Larry Rose  
Respondent

\_\_\_\_\_  
Date

ARBITRATION PANEL

Elmer G. Cowan, Esq.

- Sole Public Arbitrator

Arbitrator's Signature

Elmer G. Cowan

Elmer G. Cowan, Esq.  
Sole Public Arbitrator

AUG - 2 2004

Date

November 17, 2004

Date of Service (For NASD office use only)