

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Norma B. Franklin

and

Case Number: 03-01533
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch Pierce Fenner & Smith and
Donna P. McKenzie Grimm

NATURE OF DISPUTE

Customer v. Member Firm and Associated person

REPRESENTATION OF PARTIES

Norma B. Franklin ("**Claimant**") was represented by Bradley M. Whalen, Esq., of Doyle, Restrepo, Harvin & Robbins, LLP, in Houston Texas.

Merrill Lynch Pierce Fenner & Smith ("**Merrill Lynch**") and Donna P. McKenzie Grimm ("**Grimm**") hereinafter collectively referred to as "Respondents" were represented by Jack D. Ballard, Esq., of the Ballard Law Firm, in Houston Texas.

CASE INFORMATION

The Statement of Claim was filed on or about March 4, 2003.

The Submission Agreement of Claimant, Norma B. Franklin, was signed on or about February 25, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch Pierce Fenner & Smith and Donna P. McKenzie Grimm, on or about May 23, 2003.

The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, was signed on or about May 20, 2003.

The Submission Agreement of Respondent, Donna P. McKenzie Grimm, was signed on or about May 20, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, omission of facts, suitability, misrepresentations, failure to supervise, negligence, and breach of contract. *The causes of action relate to the recommendation and sale of unspecified securities.* Claimant alleged that Respondents recommended and sold inappropriately aggressive and speculative accounts, i.e. emerging growth funds, research funds and global technology funds, given that she is retired and on a limited income and an unsophisticated investor. Claimant alleges that Grimm invested her life savings in unsuitable funds that went against her financial goals.

Unless specifically admitted in their Answer, Respondents, Merrill Lynch Pierce Fenner & Smith and Donna P. McKenzie Grimm, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondents were not the cause of any damages to Claimant; any losses were the result of market forces or Claimant's own investment and withdrawal; Respondents were not the proximate cause of any damages to Claimant as a result of any alleged misconduct on their part; and Respondents alleged that Claimant failed to mitigate her damages.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory	\$500,000
Punitive/Exemplary	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified
Attorney's Fees	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondents requested an expungement of Respondent Donna McKenzie Grimm's record.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice in their entirety;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Donna McKenzie Grimm's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent, Donna McKenzie Grimm, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith.

Member surcharge = \$1700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2750.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: January 23, 2004	1 session
February 2, 2004	1 session
One (1) Pre-hearing session with Panel x \$1125.00	= \$1125.00
Pre-hearing conference: September 12, 2003	1 session
Five (5) Hearing sessions x \$1125.00	= \$5625.00
Hearing Dates: April 13, 2004	2 sessions
April 14, 2004	2 sessions
April 15, 2004	1 session
Total Forum Fees	= \$7650.00

The Arbitration Panel has assessed \$3825.00 of the forum fees to Norma B. Franklin.

The Arbitration Panel has assessed \$3825.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith.

FEE SUMMARY

Claimant, Norma B. Franklin, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3825.00
Total Fees	= \$ 4125.00
Less payments	= \$ 1425.00
Balance Due NASD Dispute Resolution	= \$ 2700.00

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

Member Fees	= \$ 5200.00
Forum Fees	= \$ 3825.00
Total Fees	= \$ 9025.00
Less payments	= \$ 5950.00
Balance Due NASD Dispute Resolution	= \$ 3075.00

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

ARBITRATION PANEL

Michael E. McGown, Esq. - Public Arbitrator, Presiding Chair
Charles C. Bailey - Public Arbitrator
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Michael E. McGown, Esq.
Michael E. McGown, Esq.
Public Arbitrator, Presiding Chair

May 13, 2004
Signature Date

/s/ Charles C. Bailey
Charles C. Bailey
Public Arbitrator

April 23, 2004
Signature Date

/s/ Carol Ann Stapper
Carol Ann Stapper
Non-Public Arbitrator


April 23, 2004
Signature Date

April 23, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

Michael E. McGown, Esq. - Public Arbitrator, Presiding Chair
Charles C. Bailey - Public Arbitrator
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators:


Michael E. McGown, Esq.
Public Arbitrator, Presiding Chair

5-13-04
Signature Date

Charles C. Bailey
Public Arbitrator

Signature Date

Carol Ann Stapper
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Michael E. McGown, Esq. - Public Arbitrator, Presiding Chair
Charles C. Bailey - Public Arbitrator
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators:

Michael E. McGown, Esq.
Public Arbitrator, Presiding Chair

Charles C. Bailey
Charles C. Bailey
Public Arbitrator

Signature Date

4-25-04
Signature Date

Carol Ann Stapper
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Michael E. McGown, Esq. - Public Arbitrator, Presiding Chair
Charles C. Bailey - Public Arbitrator
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators:

Michael E. McGown, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Charles C. Bailey
Public Arbitrator

Signature Date



Carol Ann Stapper
Non-Public Arbitrator

4-23-04

Signature Date

Date of Service (For NASD office use only)