

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Norma Irene Fuenzalida, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated,
Respondent

Case Number: 03-01580

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Keith D. Fraser, Esq.
Law Offices of Aidikoff & Uhl
Beverly Hills, California

For Respondent:

Peter B. Dolan, Esq.
The Dolan Law Firm
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: March 4, 2003

First Amended Statement of Claim filed: May 21, 2003

Claimant's Uniform Submission Agreement signed: March 3, 2003

Statement of Answer filed by Respondent: April 30, 2003

Respondent's Uniform Submission Agreement signed: April 8, 2003

CASE SUMMARY

In the Statement of Claim and First Amended Statement of Claim, Claimant alleged breach of fiduciary duty, fraud, constructive fraud, failure to supervise, violation of federal and state securities laws, and violation of NASD rules of fair practice and NYSE rules. The allegations involved various securities including Federated High Income Bond Fund, EV High Income Fund, and JDS Uniphase.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Initial and Amended Statements of Claim.

RELIEF REQUESTED

In the Statement of Claim and First Amended Statement of Claim, Claimant requested \$149,489.02 in compensatory damages, disgorgement and restitution of all earnings, profits, compensation and benefits, pre- and post-judgment interest at the legal rate, unspecified punitive damages, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Initial and Amended Statement of Claim in their entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On May 21, 2003, Claimant filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On March 24, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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. Claimant's claims are denied in their entirety.
2. The parties shall bear their respective costs, including attorney's fees.
3. All other relief requested and not expressly granted is denied.

Dissenting Opinion of Arbitrator Michael Leymon Coffey, MPH

Arbitrator Michael Leymon Coffey, MPH dissents, and for himself alone, would conclude as set forth below:

1. The investor was not qualified for the situation, even though she insisted on making the investment.
2. According to the broker, investment advisor, and Merrill Lynch, Pierce, Fenner & Smith, Incorporated's company policy, the broker has to know the client and the investment strategy. However, a lack of review by management caused the client to be placed in an unsuitable portfolio.
3. Clearly, company policy and the broker, in assigning this particular client with this portfolio, ignored company policy and the legal definition of fiduciary responsibility and suitability.
4. Standards and operating procedures promulgated to protect the best interest of the client should be followed to avoid placing unqualified clients in unsuitable portfolios.

FEES

Pursuant to the Code of Arbitration Procedure ("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	= \$ 300.00
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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, Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 3,375.00

Pre-hearing conferences:	August 1, 2003	1 session
	August 7, 2003	1 session
	September 5, 2003	1 session

Eight (8) Hearing sessions @ \$1,125.00/session = \$ 9,000.00

Hearings:	May 3, 2004	2 sessions
	May 4, 2004	2 sessions
	May 5, 2004	2 sessions
	May 6, 2004	2 sessions

Total Forum Fees = \$12,375.00

1. The Panel assessed \$6,187.50 of the forum fees to Claimant Norma Irene Fuenzalida.
2. The Panel assessed \$6,187.50 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

Fee Summary

1. Claimant, Norma Irene Fuenzalida, is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,187.50
Total Fees	= \$ 6,487.50
Less payments	= \$ (1,425.00)
Balance Due NASD Dispute Resolution	= \$ 5,062.50

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,187.50
Total Fees	= \$11,387.50
Less payments	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 6,187.50

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

Royal D. Heisser	-	Public, Presiding Chair
Michael Leymon Coffey, MPH	-	Public Arbitrator
Gerald C. Tambe	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Royal D. Heisser
Royal D. Heisser
Chair, Public Arbitrator

5-13-2004
Signature Date

Gerald C. Tambe
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Michael Leymon Coffey, MPH
Public Arbitrator

Signature Date

5/17/04
Date of Service

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Chair, Public Arbitrator

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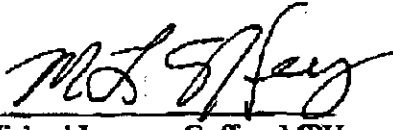
Royal D. Heisser
Chair, Public Arbitrator

Signature Date

Gerald C. Tambe
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



Michael Leymon Coffey, MPH
Public Arbitrator

13 MAY 2004
Signature Date

5/17/04
Date of Service