

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 03-01583

William L. Sutton, IRA

Name of the Respondents

Hearing Site: Charlotte, North Carolina

Merrill Lynch Pierce Fenner & Smith, Inc.
John Joseph Brienza

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant, William L. Sutton, IRA, hereinafter referred to as "Claimant", was represented by Fred W. DeVore, III, DeVore, Action & Stafford, P.A., Charlotte, North Carolina.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and John Joseph Brienza ("Brienza"), hereinafter collectively referred to as "Respondents", were represented by Nina N. Smith, Esq., Smith Ellis & Stuckey, P.A., Columbia, South Carolina.

CASE INFORMATION

Statement of Claim filed on March 4, 2003.

Claimant signed the Uniform Submission Agreement on March 1, 2003.

Statement of Answer filed by Respondents on May 19, 2003.

Respondent Brienza signed the Uniform Submission Agreement on April 10, 2003.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on April 2, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: negligence, breach of contract, failure to disclose, and suitability. The causes of action relate to the purchase and sale of various unspecified stocks and mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state facts sufficient to constitute a claim against Respondents, waiver, estoppel, contributory or comparative negligence, assumption of risk, failure to mitigate, and statute of limitations.

RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages in excess of \$267,045.00.

AWARD

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

1. Respondents Merrill Lynch and Brienza are jointly and severally liable to and shall pay to Claimant compensatory damages of \$267,045.00, plus simple interest at a rate of 8% per annum from November 1, 2002 until the award is paid in full;
2. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein is denied in its entirety.

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
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

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 has assessed forum fees for each session conducted. A 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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: November 17, 2003 1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
Hearing Dates: May 11, 2003 2 sessions	
Total Forum Fees	= \$3,375.00

1. The Panel has assessed \$1,687.50 of the forum fees to Claimant.
2. The Panel has assessed \$1,687.50 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

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

3. Respondents are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$1,687.50
Total Fees	= \$1,687.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,687.50

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

ARBITRATION PANEL

Clarence C. Guy	-	Public Arbitrator, Presiding Chairperson
Larry Ray Green, JD	-	Public Arbitrator, Panelist
Patricia A. Boorman	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Clarence C. Guy

Clarence C. Guy

Public Arbitrator, Presiding Chairperson

5.13.04

Signature Date

Larry Ray Green, JD
Public Arbitrator, Panelist

Signature Date

Patricia A. Boorman
Non-Public Arbitrator, Panelist

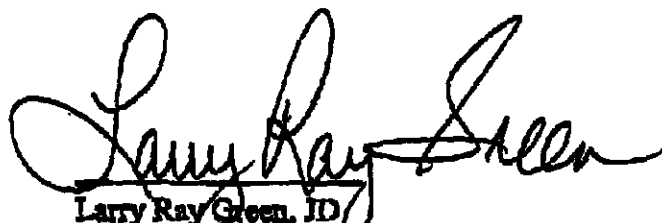
Signature Date

May 14 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Clarence C. Guy
Public Arbitrator, Presiding Chairperson

Signature Date



Larry Ray Green, JD
Public Arbitrator, Panelist



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Patricia A. Boorman
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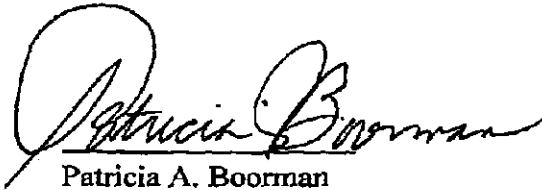
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