

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Nora Kreger

Case Number: 03-01621

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Robert J. McKiernan

Hearing Site: Philadelphia, PA

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

REPRESENTATION OF PARTIES

Claimant, Nora Kreger, hereinafter referred as "Claimant", was represented by Roger A. Johnsen, Esq., 1845 Walnut Street, Philadelphia, PA. 19103-4788.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Robert J. McKiernan ("McKiernan"), hereinafter collectively referred to as "Respondents", were represented by William J. Manning, Jr., Esq., Loeb & Loeb, LLP, 345 Park Ave., New York, New York 10154.

CASE INFORMATION

Statement of Claim filed on March 6, 2003.

Claimant's Uniform Submission Agreement signed on December 31, 2002.

Statement of Answer filed by Respondents on or about May 13, 2003.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on March 21, 2003.

Respondent McKiernan signed the Uniform Submission Agreement on May 9, 2003.

CASE SUMMARY

Claimant alleged causes of action against Respondents including failure to supervise, misrepresentation/non-disclosure, unauthorized trading, omission of facts, unsuitability, negligence, breach of fiduciary duty, gross negligence, and punitive damages. The causes of action related to the purchase and sale of various unspecified securities.

Respondents Merrill Lynch and Robert J. McKiernan denied all the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondents Merrill Lynch and Robert J. McKiernan claimed that Claimant suffered no losses. Respondents aver that Claimant realized a

profit of over \$350,000 from 1995 through September 2001 when the accounts were transferred out. Claimant also states that Claimant spent over \$450,000 during the lifetime of the account. Respondents Merrill Lynch and Robert J. McKiernan deny that they were negligent, deny that the investments were unavailable and deny failing to execute an order. Respondents assert that all transactions were authorized by Claimant.

RELIEF REQUESTED

Claimant requested the following damages:

Compensatory Damages	\$206,000.47
Punitive Damages	\$ 50,000.00
Interest	\$ 8,323.49
Attorneys' Fees	\$ 30,000.00

Respondents Merrill Lynch and Robert J. McKiernan requested denial of Claimant's claims, and that the Panel award them attorneys' fees and costs. Respondents Merrill Lynch and Robert J. McKiernan also requested expungement of this matter from Mr. McKiernan's Central Registration Depository ("CRD") record maintained by the NASD.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, Claimant, Merrill Lynch and Robert J. McKiernan fully and finally settled all claims by and between them. Therefore, they submit this Stipulated Award to the Panel for its consideration and request that it be entered.

Claimant, Merrill Lynch and Robert J. McKiernan have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Merrill Lynch and Robert J. McKiernan are dismissed;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Robert J. McKiernan's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent McKiernan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. Each party shall bear its own costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, 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

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. Accordingly, Merrill Lynch is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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: January 27, 2004 1 session	

Total Forum Fees	= \$1,125.00
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1. The Panel has assessed \$562.50 of the forum fees to Claimant.
2. The Panel has assessed \$218.25 of the forum fees to Respondent Merrill Lynch.
3. The Panel has assessed \$218.25 of the forum fees to Respondent McKiernan.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Retained hearing session deposit	= \$ 562.50
Total Fees	= \$1,425.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch is assessed and shall pay:

Member Fees	= \$5,200.00
Forum Fees	= \$ 281.25
Total Fees	= \$5,481.25
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 218.25

3. Respondent Mckiernan is assessed and shall pay:

Forum Fees	= \$ 281.25
Total Fees	= \$ 281.25
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 218.25

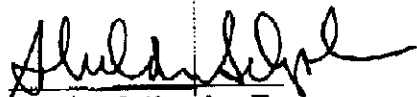
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Sheldon Seligsohn, Esq.
Jill Leeds-Rivera
Joseph G. DiGiacomo

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Sheldon Seligsohn, Esq.
Public Arbitrator, Presiding Chairperson

2/11/05
Signature Date

Jill Leeds-Rivera
Public Arbitrator, Panelist

Signature Date

Joseph G. DiGiacomo
Non-Public Arbitrator, Panelist

Signature Date

2/14/05
Date of Service (For NASD Dispute Resolution office use only)

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Joseph G. DiGiacomo	-	Non-Public Arbitrator, Panelist

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Public Arbitrator, Panelist

Signature Date


Joseph G. DiGiacomo
Non-Public Arbitrator, Panelist

FEB 14, 2005
Signature Date

2/17/05
Date of Service (For NASD Dispute Resolution office use only)