
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Oreatha Farley

Case Number: 03-01689

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
John D. Letourneau

Hearing Site: Tampa, Florida

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

REPRESENTATION OF PARTIES

For Oreatha Farley, hereinafter referred to as "Claimant": David D. Davis, Hankin, Persson, Davis McClenathan, & Darnell, Sarasota, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and John D. Letourneau ("Letourneau"), hereinafter collectively referred to as "Respondents": Francis M. Curran, Esq., Francis M. Curran, P.A., Clearwater, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 3, 2003.

Claimant signed the Uniform Submission Agreement: February 9, 2003.

Statement of Answer filed by Respondents on or about: May 29, 2003.

Respondent Letourneau signed the Uniform Submission Agreement: March 31, 2003.

Respondent Merrill signed the Uniform Submission Agreement: May 2, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: negligent misrepresentation and breach of fiduciary duty. The causes of action relate to the loss of Claimant's vested retirement benefits from the Michigan Public School Employees Retirement System ("MPSERS"), allegedly caused by Respondents' failure to advise Claimant of the consequence associated with Claimant's execution of MPSERS's Waiver Statement, and investments in unspecified securities products in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in an amount exceeding \$175,000.00, costs and attorney's fees.

Respondents requested that all claims against them be dismissed, that all costs and forum fees be assessed against Claimant, that all references to this matter be expunged from Respondent Letourneau's individual registration record maintained by the NASD Central Registration Depository ("CRD"), and that Respondents be awarded such other and further relief as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant initially filed a complaint regarding this dispute in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, Civil Division ("Circuit Court"). Thereafter, Respondents filed in the Circuit Court a Motion to Compel Arbitration and to Stay Proceedings. On December 6, 2002, the Circuit Court issued an Order granting Respondents' motion and directing the parties to submit this dispute to arbitration in accordance with the terms of the arbitration agreement entered into by the parties.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Merrill is liable on all claims asserted by Claimant, and shall pay to Claimant 75% of her exact Michigan retirement benefits (including annual increases) for life, plus Florida's statutory interest on all back payments. Back payments plus interest shall be paid in a lump sum. Future payments shall be paid monthly on the same date of each month that Michigan retirement benefits were to be paid, plus Florida's statutory interest from the date each monthly payment is due until the monthly payment is made.

All claims asserted against Respondent Letourneau are denied.

Claimant is the prevailing party. The issues of entitlement to and amount, if any, of attorneys' fees to be awarded are deferred to a court of competent jurisdiction.

Respondent Merrill is liable and shall reimburse Claimant the sum of \$11,681.96, representing 75% of the costs incurred by Claimant in connection with this arbitration.

Respondent Merrill is liable and shall pay to Claimant the sum of \$300.00, representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Pursuant to the agreement of the parties, the Panel recommends that all references to the above-captioned arbitration be expunged from Respondent Letourneau's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Letourneau must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Merrill is a member firm and 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

Adjournment Fees

No adjournments were requested in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

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 the Panel @ \$1,125.00/session = \$1,125.00

Pre-hearing conference: October 29, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00/session = \$4,500.00

Hearing Dates: January 22, 2004 3 sessions

March 11, 2004 1 session

Total Forum Fees = \$5,625.00

The Panel has assessed forum fees of \$1,406.25 to Claimant.
The Panel has assessed forum fees of \$4,218.75 to Respondent Merrill.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$1,406.25</u>
Total Fees	= \$1,706.25
<u>Less Payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 281.25

Respondent Merrill is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$4,218.75</u>
Total Fees	= \$9,418.75
<u>Less Payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$4,218.75

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

ARBITRATION PANEL

Paul Sidney Elliott, Esq.	-	Public Arbitrator, Presiding Chairperson
Nickolas F. Monteforte, Esq.	-	Public Arbitrator
Andrew Fellios	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Paul Sidney Elliott, Esq.
Public Arbitrator, Presiding Chairperson

March 16, 2004
Signature Date

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/s/
Nickolas F. Monteforte, Esq.
Public Arbitrator

March 17, 2004
Signature Date

/s/
Andrew Fellios
Non-Public Arbitrator

March 19, 2004
Signature Date

March 19, 2004
Date of Service (For NASD Dispute Resolution office use only)

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Nickolas F. Monteforte, Esq.	-	Public Arbitrator
Andrew Fellios	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Paul Sidney Elliott, Esq.
Public Arbitrator, Presiding Chairperson

3/16/04
Signature Date

NASD Dispute Resolution

Arbitration No. 03-01689

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Nickolas F. Monteforte, Esq.
Public Arbitrator

3-17-04
Signature Date

Andrew Fellios
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution

Arbitration No. 03-01639

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Nickolas P. Monteforte, Esq.
Public Arbitrator

Signature Date

Andrew Fellos

Andrew Fellos
Non-Public Arbitrator

19 March 2004

Signature Date

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