

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
The Estate of Eva Bond

Case Number: 03-01900

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Gary Lee Morton

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant The Estate of Eva Bond, hereinafter referred to as "Claimant": H. Allen Pennington, Jr., Esq. of the firm of Pennington, Hill & Baker, L.L.P., located in Fort Worth, Texas.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Gary Lee Morton ("Morton"), hereinafter collectively referred to as "Respondents": Charles A. Hammaker, Esq., of The Ballard Law Firm, located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: March 17, 2003.

Claimant signed the Uniform Submission Agreement: April 10, 2003.

Statement of Answer filed by Respondents on: June 18, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 18, 2003.

Respondent Morton did not file a signed Uniform Submission Agreement.

Claimant's Pre-Hearing Brief filed: October 7, 2005.

Respondents' Pre-Hearing Brief filed: October 7, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; violation of fiduciary duty; violation of Section 27.01 of the Texas Business and Commerce Code; violation of the Texas Securities Act; and negligence. The causes of action related to the sale of a large number of stocks in Claimant's accounts and the resulting taxes and penalties that were incurred by these sales.

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

1. The Claim fails to state a cause of action upon which damages can be recovered;
2. At all relevant times, Respondents acted in good faith and did not, directly or indirectly, induce any acts constituting a cause of action;
3. The Claimant failed to mitigate damages;
4. The Claimant expressly ordered, approved, participated in and ratified the acts and transactions complained of and upon which recovery is sought. Accordingly, the Claimant is estopped from recovery herein;
5. Respondents acted in a commercially reasonable manner, consistent with their obligations and responsibilities towards the Claimant;
6. Any and all alleged losses suffered by the Claimant were proximately caused by its own conduct or negligence; and,
7. At all relevant times, Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees, and at all times acted in good faith and did not at any time, directly or indirectly, induce any acts or acts constituting a cause of action.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	In an amount of not less than \$150,268.60
Punitive Damages	In an amount as defined under Section 27.01 of the Texas Business & Commerce Code, or as determined by Texas common law, or as shown at hearing
Interest	Pre-judgment and post-judgment at the appropriate legal rates
Attorneys' Fees	As shown at hearing
Other Costs	As shown at hearing
Other Monetary/Non-Monetary Relief if any:	As determined to be proper by the arbitrators.

Respondent requested that the Claim be denied in all respects, that all references to this matter be expunged from Morton's registration records, and that the costs of this proceeding be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Morton did not file a properly executed submission to arbitration with NASD Dispute Resolution, but is required to submit to arbitration pursuant to the Code and is bound by

the determination of the Panel on all issues submitted.

On October 17, 2005, the parties entered into an agreement to dismiss this arbitration. Pursuant to the agreement, Claimant would dismiss with prejudice its claims against Respondents under certain terms and conditions. In addition, the Claimant agreed to the expungement of Respondent Morton's NASD record.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and in consideration of the parties' agreement, the Panel orders as follows:

1. The claims asserted by the Claimant, The Estate of Eva Bond, are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gary Lee Morton'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 Morton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their own costs of arbitration, except for those sums specifically enumerated herein; and,
4. Any and all relief not specifically addressed herein, including punitive and/or treble damages, is denied.

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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following member fees are assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted pursuant to the parties' agreement. A 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 Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: January 10, 2005 1 session	
October 6, 2005 1 session	
One (1) Hearing session @ \$1,125.00	= \$ 1,125.00
Hearing Date: October 18, 2005 1 session	
Total Forum Fees	= \$ 3,375.00

The Panel has assessed \$1,125.00 of the forum fees to the Claimant, The Estate of Eva Bond, and has assessed the remaining \$2,250.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gary Lee Morton.

EEE SUMMARY

Claimant, The Estate of Eva Bond, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

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

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gary Lee Morton are jointly and severally liable for:

Forum Fees	= \$ 2,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

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ARBITRATION PANEL

William M. Lamoreaux - Public Arbitrator, Presiding Chairperson
Arno C. Schwethelm - Public Arbitrator
Jack R. Settles - Non-Public Arbitrator

Concurring Arbitrators' Signatures



William M. Lamoreaux
Public Arbitrator, Presiding Chairperson

10/24/05
Signature Date

Arno C. Schwethelm
Public Arbitrator

Signature Date

Jack R. Settles
Non-Public Arbitrator

Signature Date

10/25/05 
Date of Service (For NASD Dispute Resolution office use only)

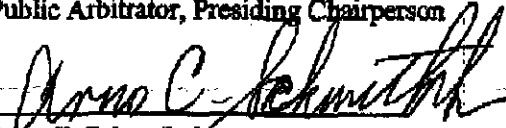
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Public Arbitrator, Presiding Chairperson



Arno C. Schwethelm
Public Arbitrator

Signature Date

10-25-2005

Signature Date

Jack R. Settles
Non-Public Arbitrator

Signature Date

10/25/05 MM

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Public Arbitrator

Signature Date



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10/25/05
Signature Date

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