

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

SUZANNE BOREN,

Claimant,

vs.

MERRILL LYNCH, PIERCE, FENNER  
& SMITH INCORPORATED, ROBERT V.  
CECIL and NANCY A. SHERTZER,

Respondents

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NASD Arbitration # 03-01950

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**REPRESENTATION OF PARTIES**

Claimant Suzanne Boren, hereinafter referred to as "Claimant," was represented by Arthur Hewett, P.O. Box F-2, Snowmass, CO 81615.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Robert V. Cecil ("Cecil") and Nancy A. Shertzer ("Shertzer"), hereinafter collectively referred to as "Respondents", were represented by John Kincade, Winstead Sechrest & Minick P.C., 5400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270-2199.

**CASE INFORMATION**

The Claimant filed the Statement of Claim on or about the March 19, 2003.

The Claimant signed the Uniform Submission Agreement on March 13, 2003.

The Respondents filed the Statement of Answer on or about May 30, 2003.

Respondent Merrill Lynch submitted a signed Uniform Submission Agreement on April 2, 2003. On May 7, 2003, Respondent Cecil submitted a signed Uniform Submission Agreement. On May 13, 2003, Respondent Shertzer submitted a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: Unsuitability, breach of contract, negligence and breach of fiduciary duty.

Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's alleged damages were illusory, Claimant failed to state a claim, Claimant

failed to particularize facts or legal theories under which Respondents could be held liable, Claimant self directed her account, Claimant directed, authorized, consented to, acquiesced and/or ratified all transactions in her account, Claimant made the investment decisions she complained of, Claimant's alleged losses were due to her investment decisions or market conditions outside Respondents' control and Respondents acted properly and in good faith, Respondents made no guarantee to Claimant, Claimant's claims are barred by waiver and estoppel, Claimant failed to mitigate her alleged damages.

#### **RELIEF REQUESTED**

In the Statement of Claim, Claimant Suzanne Boren requested:

Compensatory Damages	\$100,000
Punitive Damages	Unspecified
Interest	Unspecified
Other Monetary/Non-Monetary Relief if any:	None

In their Answer, Respondents sought reimbursement of their attorneys' fees and expenses from Claimant and that this Complaint/Proceeding be expunged from Mr. Cecil's and Ms. Shertzer's CRD records.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties settled this dispute. Claimant Boren and Respondents Merrill Lynch, Cecil and Shertzer have executed a Settlement Agreement and Release. As part of the consideration for the settlement, Claimant Boren agreed not to oppose the expungement of this matter from Respondent Cecil's and Shertzer's CRD's.

#### **STIPULATED AWARD**

Pursuant to the parties' agreement, the Arbitration Panel, without making any findings of fact or conclusions of law, has entered the following determination:

1. Claimant's claims against Respondents Merrill Lynch, Cecil and Shertzer are dismissed with prejudice.
2. Respondents' claim against Claimant Boren is dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned complaint from Respondent Cecil's and Respondent Shertzer'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, Respondents Cecil and Shertzer must obtain

confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. Any and all relief not specifically addressed herein is denied with prejudice.

### **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 persons at the time of the events giving rise to the dispute. Merrill Lynch is a member firm and 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

#### **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(s) with Panel @ 1,125.00	= \$ 1,125.00
Pre-hearing conference: October 3, 2003	

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Total Forum Fees	= \$ 1,125.00
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The Panel has assessed 1/3 of the forum fees in the amount of \$375.00 to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated, 1/3 of the forum fees in the amount of 375.00 to Respondent Robert V. Cecil and 1/3 of the forum fees in the amount of \$375.00 to Respondent Nancy A. Shertzer.

Pursuant to Rule 10332(f), NASD Dispute Resolution has retained the Claimant's hearing session deposit in the sum of \$1,125.00.

**Fee Summary**

Claimant is liable for:

Initial Filing Fee	= \$ 300.00
Rule 10332(f) Fee Retention	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Refund Due	= \$ 0.00

Respondent Merrill Lynch is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 5,575.00
Less payments	= \$ 5,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Robert V. Cecil is liable for:

Forum Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

Respondent Nancy A. Shertzer is liable for:

Forum Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

FROM : HEWETT

FAX NO. : 9709231887


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**ARBITRATION PANEL**

Arno C. Schweithelm – Public Arbitrator, Chairperson  
Sanford D. Sanes – Public Arbitrator  
Raymond E. Wooldridge – Industry Arbitrator

**Concurring Arbitrators' Signature(s)**

  
Arno C. Schweithelm  
Public Arbitrator, Chairperson

9-3-2004  
Signature Date

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Sanford D. Sanes  
Public Arbitrator

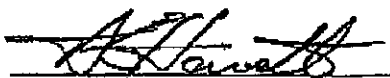
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Signature Date

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Raymond E. Wooldridge  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**AGREED:**

  
Arthur Hewett

ATTORNEY FOR SUZANNE BOREN

WINSTEAD SECHREST & MINICK P.C.

  
John Kincade State Bar No. 11429600  
Chad E. Robinson State Bar No. 24037373

ATTORNEYS FOR RESPONDENTS

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Arno C. Schwethelm -- Public Arbitrator, Chairperson  
Sanford D. Sanes -- Public Arbitrator  
Raymond E. Wooldridge -- Industry Arbitrator

**Concurring Arbitrators' Signature(s)**

Arno C. Schwethelm  
Public Arbitrator, Chairperson

Signature Date

  
Sanford D. Sanes  
Public Arbitrator

9-8-04  
Signature Date

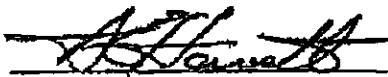
Raymond E. Wooldridge  
Industry Arbitrator

Signature Date

October 11, 2004

Date of Service (For NASD Dispute Resolution use only)

AGREED:

  
Arthur Hewett

ATTORNEY FOR SUZANNE BOREN

WINSTEAD SECHREST & MINICK P.C.

  
John Kincade State Bar No. 11429600  
Chad E. Robinson State Bar No. 24037373

ATTORNEYS FOR RESPONDENTS