

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert L.V. Jernigan, Trustee U/A Dated
June 6, 1983 (Claimant)

and

Merrill Lynch, Pierce, Fenner & Smith Incorporated,
and Scott Winningham (Respondents)

Case Number: 03-02266

Hearing Site: Detroit, Michigan

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

REPRESENTATION OF PARTIES

Claimant Robert L.V. Jernigan, Trustee U/A Dated June 6, 1983 hereinafter referred to as "Claimant": D. Michael Kratchman, Esq., Rubenstein, Isaacs & Xenos, P.C., Attorneys at Law, Southfield, Michigan.

Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Scott Winningham ("Winningham") hereinafter referred to as "Respondents": Harry D. Frisch, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., New York, NY.

CASE INFORMATION

The Statement of Claim filed on or about March 27, 2003.

The Claimant signed the Uniform Submission Agreement on or about March 21, 2003.

A Joint Statement of Answer was filed by Respondents on or about June 25, 2003.

Merrill Lynch signed the Uniform Submission Agreement on or about June 25, 2003.

CASE SUMMARY

Claimant in his Statement of Claim asserted the following causes of action: breach of fiduciary duty, negligence, and unsuitability. Claimant alleged that the Respondents made unsuitable investment recommendations of various unspecified securities in his account.

In their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses including: the Claimant has failed to state a claim upon which relief may be granted, and the Claimant has failed to act to mitigate his alleged damages, if any.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$100,000.00, plus interest, costs, attorney fees, and exemplary and/or punitive damages in an amount to be determined by the panel.

Respondents requested that the Statement of Claim be dismissed in its entirety and requested that the Arbitration Panel issue an order directing that all references of this proceeding and the underlying complaint be expunged from the CRD records of Respondent Winningham, that the cost of this proceeding be assessed against Claimant, and that Respondents be awarded such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Scott Winningham did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared through counsel is bound by the determination of the arbitration panel on all issues submitted.

Respondents and Claimant advised that on or about May 26, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1) Pursuant to the confidential settlement agreement reached between all parties, all claims against the Respondents Merrill Lynch and Winningham are dismissed with prejudice;
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Scott Winningham's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent Scott Winningham must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive;
- 3) The Respondents will bear their own costs and expenses and any of Claimant's costs and expenses associated with the above-referenced arbitration, as determined by NASD Dispute Resolution; and
- 4) Any and all relief not specifically addressed herein 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner and Smith Inc.

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

April 27-29, 2004, adjournment requested jointly (fee assessed to Respondent MLPFS)	= \$ 1,125.00
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Forum Fees and Assessments

The Arbitrator/Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 17, 2003 1 session	
Total Forum Fees	= \$ 1,125.00

The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Robert L.V. Jernigan, Trustee U/A Dated June 6, 1983, is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$1,425.00
Balance Refunded by NASD Dispute Resolution	= \$1,125.00

Respondents, Merrill Lynch Pierce Fenner & Smith and Scott Winningham, are jointly and severally liable for:

Forum Fees	= \$1,125.00
Total Fees	= \$1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,125.00

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

Member Fees	= \$5,200.00
Adjournment Fees	= \$1,125.00
Total Fees	= \$6,325.00
Less payments	= \$6,325.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Stephen Joseph Murphy, III, Esq. - Public Arbitrator, Presiding Chair
Peter P. Cobbs, Esq. - Public Arbitrator
William C. Kubicz - Non-Public Arbitrator

Arbitrators' Signatures

/s/ Stephen Joseph Murphy, III, Esq. _____
Stephen Joseph Murphy, III, Esq.
Public Arbitrator, Presiding Chair

07/25/04 _____
Date

/s/ Peter S. Cobbs, Esq. _____
Peter P. Cobbs, Esq.
Public Arbitrator

07/27/04 _____
Date

/s/ William C. Kubicz _____
William C. Kubicz
Non-Public Arbitrator

07/26/04 _____
Date

08/02/04 _____
Date of Service (For NASD office use only)

<u>Forum Fees</u>	<u>=\$1,125.00</u>
<u>Total Fees</u>	<u>=\$1,125.00</u>
<u>Less payments</u>	<u>=\$ 0.00</u>
Balance Due NASD Dispute Resolution	=\$1,125.00

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Peter P. Cobbs, Esq. - Public Arbitrator
William C. Kubicz - Non-Public Arbitrator

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Stephen Joseph Murphy, III, Esq.
Public Arbitrator, Presiding Chair

Date

Peter P. Cobbs
Peter P. Cobbs, Esq.
Public Arbitrator

July 27, 2009
Date

William C. Kubicz
Non-Public Arbitrator

Date

Date of Service (For NASD office use only)

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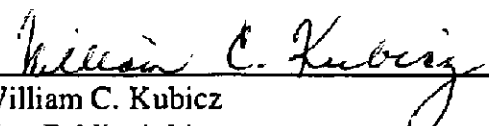
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Public Arbitrator, Presiding Chair

Date

Peter P. Cobbs, Esq.
Public Arbitrator

Date



William C. Kubicz
Non-Public Arbitrator

7/26/04

Date

Date of Service (For NASD office use only)

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Arbitration No 03-02266
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