

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Phyllis J. Bise

vs.

03-02294
Nashville, Tennessee

Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

Nature of the Dispute: Customer vs. Member Firm

REPRESENTATION OF PARTIES

Phyllis J. Bise ("**Claimant**") was represented by Travis R. McDonough, Esq. and Donald J. Aho, Esq., Miller & Martin LLP, Chattanooga, Tennessee.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Respondent**") was represented by Donald W. Strickland, Esq., Grant, Konvalinka & Harrison, Chattanooga, Tennessee.

CASE INFORMATION

The Statement of Claim was filed on or about March 31, 2003. The Submission Agreement of Claimant, Phyllis J. Bise, was signed on or about March 29, 2003. Claimant's Objection to Respondent's Untimely-Disclosed Expert Witness was filed on or about July 6, 2004.

The Statement of Answer was filed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. on or about June 11, 2003. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner Smith, Inc. was signed on or about May 27, 2003. The Amendment to Statement of Answer was filed on or about April 14, 2004. Respondent's Response to Objection to Expert Witness and Motion to Preclude Claimant's Expert Witness was filed on or about July 26, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability; negligent misrepresentations and omissions. The causes of action relate to the recommendation and order execution of various securities investments. Claimant alleged that the Respondents failed to manage her investments in light of her goals and objectives, which eventually led to drastic losses in the value of her portfolio.

Unless specifically admitted in its Answer, Respondent Merrill Lynch Pierce Fenner & Smith, Inc. denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Ms. Bise acted with full knowledge of the facts, gave the instructions for all investments transactions in her accounts and received statements and confirmations, and she ratified, approved, accepted, acquiesced in and confirmed in all respects all acts or omissions of which she might complain herein; and Ms. Bise failed to mitigate her alleged damages.

RELIEF REQUESTED

Claimant requested an award of \$497,500.00 in compensatory damages, interest, costs, attorney's fees and such other and further relief to which she may be entitled.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs.

OTHER ISSUES CONSIDERED & DECIDED

The Panel held a conference call on August 5, 2004 to consider Claimant's objection to Respondent's designation of an expert witness and entered an order, which reflected the following:

It is the decision of the panel that the objection be, and the same is hereby, overruled.
It is the further ruling of the panel that any designation by either party of additional expert witnesses be made no later than October 1, 2004.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

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:

1. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimant, Phyllis J. Bise, the sum of \$75,000.00 (Seventy-Five Thousand Dollars and No Cents) in compensatory damages;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and

3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>2,750.00</u>
Total Member Fees	\$	5,200.00

Adjournment Fees

Adjournment requested during these proceedings:

January 26-27, 2004 Hearing dates requested by both parties \$ 1,125.00

Forum Fees and Assessments

The Arbitration 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. Fees associated with these proceedings are:

1 Pre-hearing session with a single arbitrator	x	450.00	\$	450.00
January 23, 2004	1			
2 Pre-hearing sessions with Panel	x	1,125.00	\$	2,250.00

	September 29, 2003	1	session		
	February 19, 2004	1	session		
4 Hearing sessions		x		1,125.00	\$ 4,500.00
	November 15, 2004	2	sessions		
	November 16, 2004	2	sessions		
	Total Forum Fees				\$ 7,200.00

The Arbitration Panel has assessed \$7,200.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Phyllis J. Bise, is liable for:

Initial Filing Fee	= \$	300.00
<u>Adjournment Fees</u>	= \$	<u>562.50</u>
Total Fees	= \$	862.50
<u>Less payments</u>	= \$	<u>-1,425.00</u>
Refund due to Claimant	= \$	562.50

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

Member Fees	= \$	5,200.00
Adjournment Fee	= \$	562.50
<u>Forum Fees</u>	= \$	<u>7,200.00</u>
Total Fees	= \$	12,962.50
<u>Less payments</u>	= \$	<u>-5,762.50</u>
Balance Due NASD Dispute Resolution	= \$	7,200.00

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

ARBITRATION PANEL

Robert J. Warner, Jr., LLB, Esq. - Public Arbitrator, Presiding Chair
Ralph S. Paden - Public Arbitrator
Sandra J. Bakalus - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert J. Warner, Jr., LLB, Esq.
Robert J. Warner, Jr., LLB, Esq.
Public Arbitrator, Presiding Chair

11/24/04
Signature Date

/s/ Ralph S. Paden
Ralph S. Paden
Public Arbitrator

12/08/04
Signature Date

/s/ Sandra J. Bakalus
Sandra J. Bakalus
Non-Public Arbitrator

11/24/04
Signature Date

11/24/04
Date of service

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Public Arbitrator, Presiding Chair

Ralph S. Paden

Ralph S. Paden
Public Arbitrator

Signature Date

12-8-04

Signature Date

Sandra J. Bakalus
Non-Public Arbitrator

Signature Date

Date of service

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