

NASD# 03-02663

CASE SUMMARY

Claimants asserted the following causes of action: (i) breach of fiduciary duty, (ii) common law fraud, (iii) fraud under the Texas Business and Commerce Code, (iv) breach of contract, (v) negligence, (vi) violations of federal and state securities laws, and (vii) negligent supervision. The causes of action involved activities in Claimant's account involving stocks and mutual funds.

Respondents denied all of the claims in the Statement of Claim thereto.

RELIEF REQUESTED

Claimants requested the following damages:

Actual Damages	\$800,000.00
Attorney's fees and costs	Amount unspecified
Punitive damages	Amount unspecified
Pre and post judgment interest	Amount unspecified

Respondents requested the following relief:

That Claimants' Statement of Claim shall be dismissed against all parties with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Cartwright 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.

Respondent Keith A. Mason was not served with the Statement of Claim.

AWARD

On the dates set forth below, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon joint motion of Claimants and Respondents for entry of an award and the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

- 1) Any and all claims against Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lois S. Cartwright, and Keith A. Mason are dismissed with prejudice. Claimants and Respondents have entered into a confidential settlement agreement.

- 2) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Lois S. Cartwright'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 Lois S. Cartwright 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 and expenses associated with the above-referenced arbitration.
- 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	= \$ 375.00
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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 Incorporated is a party and the following member fees are assessed:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 3-6, 2004 adjournment by Merrill Lynch	= \$ 1,200.00
February 7-12, 2005 adjournment by all parties to mediate	= \$ 1,200.00

All postponement fees were waived.

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 Panel @ \$1,200.00	= \$ 1,200.00
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Pre-hearing conference: December 5, 2003 1 session
Total Forum Fees = \$ 1,200.00

The Panel has assessed \$600.00 of the forum fees to Claimant Kirby Purvis, Individually and on behalf of Katy Purvis, and has assessed the remaining \$600.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Lois S. Cartwright.

FEE SUMMARY

Claimant Kirby Purvis, Individually and on behalf of Katy Purvis is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$ 1,575.00
Balance Refunded by NASD Dispute Resolution	= \$ 600.00

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


Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Lois S. Cartwright are jointly and severally liable for:


Forum Fees	= \$ 600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

Parties' Signatures


 D. Dee Raibourn, III
 Attorney for Claimants
 Kirby Purvis, individually, and on
 behalf of Katy Purvis

10/12/05
 Date


 Will S. Montgomery
 Attorney for Respondents
 Merrill Lynch, Pierce, Fenner & Smith Incorporated
 and Lois S. Cartwright

10/12/05
 Date

ARBITRATION PANEL

Andrea Calve	-	Public Arbitrator, Presiding Chair
Robert J. Gregory	-	Public Arbitrator
Jan Glenn Valecka	-	Industry Arbitrator

Concurring Arbitrators' Signatures


 Andrea Calve

10-22-05
 Date

 Robert J. Gregory

 Date

 Jan Glenn Valecka

 Date

11/2/05 R/W
 Date Stipulated Award Served by NASD

DALLAS 1107951-1 49351-00055

Parties' Signatures



D. Dee Raibourn, III
Attorney for Claimants
Kirby Purvis, individually, and on
behalf of Katy Purvis

10/12/05
Date



Will S. Montgomery
Attorney for Respondents
Merrill Lynch, Pierce, Fenner & Smith Incorporated
and Lois S. Cartwright

10/12/05
Date

ARBITRATION PANEL

Andrea Calve	-	Public Arbitrator, Presiding Chair
Robert J. Gregory	-	Public Arbitrator
Jan Glenn Valecka	-	Industry Arbitrator

Concurring Arbitrators' Signatures

Andrea Calve

Date



Robert J. Gregory

10-20-05
Date

Jan Glenn Valecka

Date

11/2/05 
Date Stipulated Award Served by NASD