

Stipulated Award

NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants:

Gene Palmieri and Judy Palmieri,
Individually and on behalf of their IRA/IRRA

and

Names of Respondents:

Merrill Lynch, Pierce, Fenner & Smith Inc., and
Kevin Kugley

Case Number: 03-02825

Hearing Site: Houston, Texas

NATURE OF DISPUTE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimants, Gene Palmieri and Judy Palmieri, ("**Claimants**") were represented by Robert A. Kantas, Esq., of Shepherd, Smith & Edwards, L.L.P., in Houston, TX.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("**Merrill Lynch**") and Kevin Kugley ("**Kugley**") hereinafter referred to as "Respondents" were represented by Harry D. Frisch, Esq., of Merrill Lynch, Pierce, Fenner & Smith Inc., in New York, NY.

CASE INFORMATION

The Statement of Claim was filed on or about March 16, 2003.

The Submission Agreement of Claimants was signed on or about February 8, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch and Kevin Kugley, on or about July 1, 2003.

The Submission Agreement of Respondent, Merrill Lynch, was signed on or about June 30, 2003.

Respondent, Kevin Kugley, did not sign a Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, misrepresentations, omissions, suitability and failure to supervise. The causes of action relate to the recommendation and purchase of unspecified securities. Claimants alleged that the Respondents made unsuitable investment recommendations in their accounts and those of which they were custodians.

In their Answer Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses: Claimants failed to state a claim upon which relief may be granted; all losses allegedly suffered by Claimants were proximately caused by Claimants' own conduct or negligence; Claimants failed to mitigate their damages; Claimants authorized, approved, participated in and ratified the acts and transactions complained of and upon which recovery is sought; and that Claimants are accordingly estopped from recovery herein.

RELIEF REQUESTED

Pursuant to the Statement of Claim, Claimant requested the following damages:

Actual/Compensatory	\$500,000.00
Punitive/Exemplary	Unspecified
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

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 Kugley, that the cost of this proceeding be assessed against the Claimant, and that Respondents be awarded such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants and Respondents advised the NASD that on or about April 13, 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

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of such an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

- 1) Pursuant to the confidential settlement agreement reached between all parties, all claims against the Respondents Merrill Lynch and Kugley are dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Kevin Kugley'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 Kevin Kugley must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) Each party shall bear its 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, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300
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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 Merrill Lynch, Pierce, Fenner and Smith Inc. is a party.

Member Surcharge	= \$ 1700
Pre-Hearing Process Fee	= \$ 750
Hearing Process Fee	= \$ 2750
Total Member Fees	= \$ 5200

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 at \$1125/session = \$ 1125
Pre-hearing conference: October 21, 2003 1 session

One (1) Hearing Sessions with the Panel at \$1125/session = \$ 1125

Hearing Session: June 2, 2004 1 session

Total Forum Fees = \$ 2250

The Parties have agreed that Respondent, Merrill Lynch, will be assessed \$2250.00 of the forum fees

FEE SUMMARY

1. Claimants be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300
<u>Total Fees</u>	= \$ 300
<u>Less payments</u>	= \$ 1425
Refund Due to Claimant	= \$ 1125

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. be and hereby is solely liable for:

Member Fees	= \$ 5200
<u>Forum Fees</u>	= \$ 2250
<u>Total Fees</u>	= \$ 7450
<u>Less payments</u>	= \$ 5200
Balance Due NASD Dispute Resolution, Inc.	= \$ 2250

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

ARBITRATION PANEL

Thomas D. Nagle - Public Arbitrator, Presiding Chair
Walton L. Huff - Public Arbitrator
Dale A. Hearn - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas D. Nagle
Thomas D. Nagle
Public Arbitrator, Presiding Chair

June 2, 2004
Signature Date

/s/ Walton L. Huff
Walton L. Huff
Public Arbitrator

June 2, 2004
Signature Date

/s/ Dale A. Hearn
Dale A. Hearn
Non-Public Arbitrator

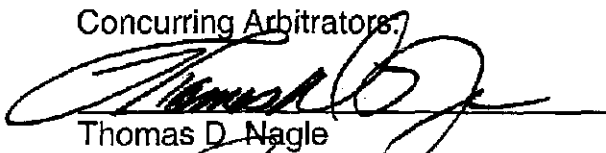
June 2, 2004
Signature Date

June 3, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

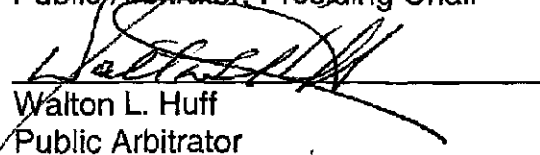
Thomas D. Nagle - Public Arbitrator, Presiding Chair
Walton L. Huff - Public Arbitrator
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Concurring Arbitrators:



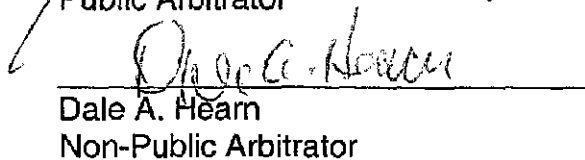
Thomas D. Nagle
Public Arbitrator, Presiding Chair

6-2-04
Signature Date



Walton L. Huff
Public Arbitrator

6/2/04
Signature Date



Dale A. Hearn
Non-Public Arbitrator

6-2-04
Signature Date

Date of Service (For NASD office use only)