

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Choux G. Wingert

and

Case Number: 03-02894  
Hearing Site: Troy, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith  
and Gerald G. Hoskins

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Choux G. Wingert ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan, PLLC, West Bloomfield, Michigan.

Merrill Lynch Pierce Fenner & Smith ("MLPFS") and Gerald G. Hoskins ("Hoskins") were represented by Clarence L. Pozza, Jr., Esq., and W. Scott Turnbull, Esq., Miller, Canfield, Paddock and Stone, P.L.C., Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 21, 2003. The Submission Agreement of Claimant, Choux G. Wingert, was signed on or about March 28, 2003.

The Statement of Answer was filed jointly by Respondents, MLPFS and Hoskins, on or about July 14, 2003. The Submission Agreement of Respondent, MLPFS, was signed on or about July 14, 2003. The Submission Agreement of Respondent, Hoskins, was signed on or about October 3, 2003.

### **CASE SUMMARY**

Claimant asserted the following legal theories: breach of contract, common law fraud, promissory estoppel, negligence, malpractice, breach of fiduciary duty, and breach of Michigan securities law. The causes of action related to the recommendation and sale of Walgreen stock and the recommendation and purchase of "high tech flyers," including Applied Micro Circuits, Applied Materials, Corning, Inc., Network Appliance, Oracle and PMC Sierra. Claimant asserted that the investments purchased from the proceeds of the sale of the Walgreen stock did not diversify her portfolio and reduce her risk level which was the goal of the sale.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims fail to state a claim upon which relief can be granted; Claimant's claims are barred by reason of the applicable statute of limitations or other periods of limitations; Claimant's claims are barred by reason of Claimants' negligence, comparative negligence and contributory negligence; and Claimant's claims are barred by Claimant's ratification of the actions of which she complains.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$174,000.00 as out-of-pocket losses, plus interest, costs, attorneys' fees, exemplary and punitive damages, rescission and additional damages as allowed by the panel.

Respondents requested that the claims asserted against them be dismissed in their entirety, that they be awarded their costs and attorneys' fees, that Respondent Hoskins' CRD record be expunged of all references to this matter, and such other relief as is just and appropriate.

### **OTHER ISSUES CONSIDERED & DECIDED**

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 NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gerald G. Hoskins' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Gerald G. Hoskins must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby 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

#### **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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

### **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 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 x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: October 27, 2003	1 session
Four (4) Hearing sessions x \$1,125.00	= \$ 4,500.00
Hearing Dates: September 8, 2004	2 sessions
September 9, 2004	2 sessions
<b>Total Forum Fees</b>	<b>= \$ 5,625.00</b>

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Choux G. Wingert.

The Arbitration Panel has assessed \$2,812.50 of the forum fees, jointly and severally, to Merrill Lynch Pierce Fenner & Smith and Gerald G. Hoskins.

### **FEE SUMMARY**

Claimant, Choux G. Wingert, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
Total Fees	= \$ 3,112.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

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

Respondents, Merrill Lynch Pierce Fenner & Smith and Gerald G. Hoskins, are jointly and severally liable for:

Forum Fees	= \$ 2,812.50
Total Fees	= \$ 2,812.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

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

**ARBITRATION PANEL**

Paul M. Stoychoff, Esq. - Public Arbitrator, Presiding Chair  
Frederick F. Fordon - Public Arbitrator  
Conrad W. Koski - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Paul M. Stoychoff, Esq.  
Paul M. Stoychoff, Esq.  
Public Arbitrator, Presiding Chair

09/10/04  
Signature Date

/s/ Frederick F. Fordon  
Frederick F. Fordon  
Public Arbitrator

09/10/04  
Signature Date

/s/ Conrad W. Koski  
Conrad W. Koski  
Non-Public Arbitrator

09/10/04  
Signature Date

09/10/04  
Date of Service (For NASD office use only)

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Frederick F. Fordon - Public Arbitrator  
Conrad W. Coski - Non-Public Arbitrator

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**Public Arbitrator**

**Signature Date**

9/10/04  
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**Non-Public Arbitrator**

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Frederick F. Fordon - Public Arbitrator  
Conrad W. Koski - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Non-Public Arbitrator

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