

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Nancy C. Russell (Claimant) and Merrill Lynch, Pierce, Fenner & Smith, Inc., and Richard T. Kellar (Respondents)

Case Number: 03-02925

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimant Nancy C. Russell hereinafter referred to as "Claimant": George W. Cochran, Esq., Cochran & Cochran, Attorneys at Law, Streetsboro, OH.

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

CASE INFORMATION

Statement of Claim filed: April 16, 2003.

Claimant signed the Uniform Submission Agreement: April 15, 2003.

Joint Statement of Answer filed by Respondents: July 9, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: July 9, 2003.

Respondent Kellar did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; misrepresentations and omissions; churning; breach of fiduciary duty; and negligence.

Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Pursuant to the Statement of Claim, Claimant requested compensatory damages in the amount of \$102,000.00; punitive damages in the amount of \$102,000.00; interest at the annual rate of 10% times 3 years or \$30,600.00; forum fees in the amount of \$1,425.00; attorneys' fees in the amount of \$10,000.00; witness and production fees in the amount of \$1,000.00; and other costs in the amount of \$1,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety, that the costs of this proceeding are assessed against the Claimant, and that they be awarded such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents and Claimant advised NASD Dispute Resolution ("NASD DR") that on or about April 27, 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 Kellar are dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Richard Kellar'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 Richard Kellar must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) Respondent Merrill Lynch will bear its own costs and expenses and any of Claimant's costs and expenses associated with the above-referenced arbitration, as determined by NASD DR.
- 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

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	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Forum Fees and Assessments

The 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 session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: February 27, 2004 1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: December 1, 2003 1 session
Total Forum Fees = \$1,575.00

The Panel has assessed \$1,575.00 of the forum fees against Merrill Lynch.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$1,425.00
Refund Due to Claimant	= \$1,125.00

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

Member Fees	= \$5,200.00
Forum Fees	= \$1,575.00
Total Fees	= \$6,775.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,575.00

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

Parties' Signatures

Nancy C. Russell
Claimant

Date

Merrill Lynch, Pierce, Fenner & Smith Inc.
Respondent

Date

Richard Kellar
Respondent

Date

Attorneys for Parties Signatures

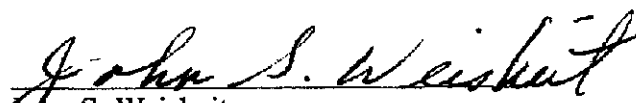
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Streetsboro, Ohio 44241
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Litigation Counsel
Merrill Lynch Office of General Counsel
222 Broadway, 13th Floor
New York, New York 10038
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Fax (212) 670-0729

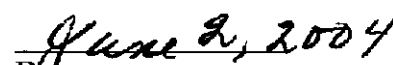
ARBITRATION PANEL

John S. Weisheit	-	Public Arbitrator, Presiding Chair
Richard S. Hines, J.D.	-	Public Arbitrator
Donald W. Rioux	-	Non-Public Arbitrator

Arbitrator's Signatures



John S. Weisheit
Public Arbitrator, Presiding Chair



Date

Richard S. Hines, J.D.
Public Arbitrator

Date

Donald W. Rioux
Non Public-Arbitrator

Date

June 25, 2004
Date of Service (For NASD office use only)

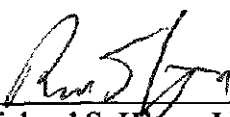
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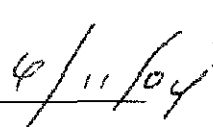
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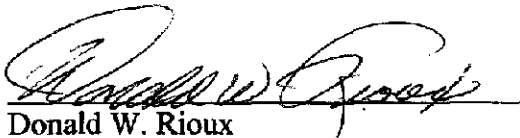
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6-15-04

Date

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