

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Jody Nelson

v.

03-02931

Denver, Colorado

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and Laura McSparren

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Jody Nelson ("**Claimant**") was represented by Elizabeth Lowery, Esq., of Fields, Fehn & Sherwin, Los Angeles, California.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**") and Laura McSparren ("**McSparren**"), hereinafter referred to as ("**Respondents**"), were represented by Kenneth C. Mennemeier, Esq., of Mennemeier, Glassman & Stroud, LLP, Sacramento, California.

CASE INFORMATION

The Statement of Claim was filed on or about April 21, 2003. Submission Agreement of Claimant was signed on or about April 21, 2003.

A Joint Statement of Answer was filed by Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Laura McSparren on or about July 6, 2003. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about June 6, 2003. Submission Agreement of Respondent Laura McSparren was signed on or about August 26, 2003.

An Amended Statement of Answer was filed jointly by Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Laura McSparren on or about July 9, 2003.

Respondents filed a Motion to Change Hearing Venue on or about July 3, 2003. Claimant filed an Opposition to Respondents' Motion to Change Venue on or about July 24, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of fiduciary duty; negligence; and suitability. The causes of action related to Claimant's allegation that Respondents made a recommendation that Claimant take proceeds from a real estate transaction and invest in various mutual funds, including: Massachusetts Investors Trust, Massachusetts Financial Services, Capital Opportunity Fund, Seligman Communication Fund, Alliance Select Investors, Alliance Technology Fund, Davis NY Venture Fund, John Hancock Small Cap, Massachusetts Investors Growth, MFS Emerging Growth Fund, Munder International, Oppenheimer Global Fund, and PIMCO Innovation Fund. Claimant stated that these recommendations were unsuitable given her investment objective of moderate income with preservation of capital. Claimant also asserted that Respondents failed to monitor or adjust Claimant's portfolio and promptly notify Claimant of any changes that needed to be made to be consistent with Claimant's investment objective.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant fully understood, and willingly accepted the risks inherent in her growth-oriented investment strategy; Claimant's claims are diminished by her own comparative negligence; and Claimant's claims are barred by the applicable statute of limitation and doctrine of laches.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award in the amount of \$160,000 in compensatory damages, plus interest, punitive damages, attorney's fees and any other relief that the panel deemed just and equitable. At the arbitration hearing, Claimant submitted a damages summary that requested compensatory damages of \$217,338, punitive damages of \$100,000, attorney's fees and costs associated with this arbitration case.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Respondent Laura McSparren's permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

On or about May 30, 2003, Claimant, Jody Nelson, executed a waiver agreement stating that this arbitration would be governed by NASD Code of Arbitration Procedures and the Federal Arbitration Act. Nelson agreed that the California Ethics Standards for Neutral Arbitrators in Contractual Arbitrations in California shall have no application whatsoever to any aspect of this arbitration, including without limitation any proceedings to obtain judicial review or judicial enforcement of any arbitration award that may be entered in this arbitration.

Pursuant to Rule 10315 of the NASD Code of Arbitration Procedures ("the Code"), the Director of Arbitration granted Respondents' Motion to Change Hearing Venue on or about August 27, 2003, and changed the venue from Los Angeles, California to Denver, Colorado.

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 originals 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. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Laura McSparren, are jointly and severally liable for and shall pay to Claimant, Jody Nelson, the sum of One Hundred Seventy Two Thousand Dollars and No Cents (\$172,000.00) in damages;
2. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Laura McSparren, are jointly and severally liable for and shall pay to Claimant, Jody Nelson, interest on the above-stated sum, at the rate of 6% per annum from and including the date of service of this award through and including the date this award is paid in full;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages and expungement relief, are denied with prejudice; and
4. 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 fee for each claim:

Initial claim filing fee = \$ 300

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, Inc.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

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 = \$ 1,125

Pre-hearing conference: 12/19/2003 1 session

Six (6) Hearing sessions with Panel x \$ 1,125 = \$ 6,750

Hearing Dates:	06/08/2004	2 sessions
	06/09/2004	2 sessions
	06/10/2004	2 sessions

Total Forum Fees = \$ 7,875

The Arbitration Panel has assessed \$ 7,875 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Jody Nelson is liable for:

Initial Filing Fee	= \$ 300
Total Fees	= \$ 300
Less payments	= \$ 1,425
Balance Refunded By NASD Dispute Resolution	= \$ 1,125

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

Member Fees	= \$ 5,200
Forum Fees	= \$ 7,875
Total Fees	= \$ 13,075
Less payments	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 7,875

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

ARBITRATION PANEL

Samuel E. Wing, Esq. - Public Arbitrator, Presiding Chair
John L. Worcester - Public Arbitrator
Roy J. Burr, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

Samuel E. Wing, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John L. Worcester
Public Arbitrator

Signature Date

Roy J. Burr, Jr.
Non-Public Arbitrator

Signature Date

6/29/04
Date of Service (NASD use only)


Member Fees	= \$ 5,200
Forum Fees	= \$ 7,875
Total Fees	= \$ 13,075
Less payments	= \$ 5,200
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John L. Worcester - Public Arbitrator
Roy J. Burr, Jr. - Non-Public Arbitrator

Concurring Arbitrators:



Samuel E. Wing, Esq.
Public Arbitrator, Presiding Chair

John L. Worcester
Public Arbitrator

Roy J. Burr, Jr.
Non-Public Arbitrator

6/22/04

Signature Date

Signature Date

Signature Date

6/24/04

Date of Service (NASD use only)

Member Fees	= \$ 5,200
Forum Fees	= \$ 7,875
Total Fees	= \$ 13,075
Less payments	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 7,875

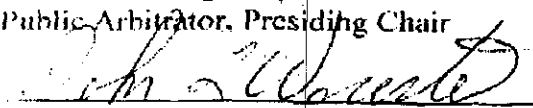
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ARBITRATION PANEL

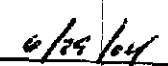
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Concurring Arbitrators:

Samuel E. Wing, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John L. Worcester
Public Arbitrator

Signature Date

Roy J. Burr, Jr.
Non-Public Arbitrator

Signature Date

6/24/04
Date of Service (NASD use only)