

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Wendell Argabrite IRA Rollover (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Dana P. Maynard (Respondents)

Case Number: 03-03000

Hearing Site: Columbus, Ohio

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant Wendell Argabrite IRA Rollover ("Argabrite IRA") hereinafter referred to as "Claimant": Edward M. Kowal, Jr., Esq., Campbell, Woods, Bagley, Emerson, McNeer & Herndon, P.L.L.C, Huntington, WV.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., ("MLPFS") and Dana P. Maynard ("Maynard") hereinafter collectively referred to as "Respondents": Harry D. Frisch, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: April 17, 2003.

Claimant signed the Uniform Submission Agreement: April 16, 2003.

Joint Statement of Answer filed by Respondents on or about: July 2, 2003.

MLPFS did not sign the Uniform Submission Agreement.

Maynard did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: suitability; misrepresentation; and failure to execute. Claimant's claim involved mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$50,000.00; interest in the amount of \$625.00; costs in the amount of \$625.00; attorneys' fees and other case-related costs.

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

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Arbitrator on all issues submitted.

AWARD

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

1. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$17,500.00.
2. 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	= \$175.00
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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, Inc. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the sole arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: October 8, 2003 1 session

Two (2) Hearing sessions @ \$450.00 = \$ 900.00

Hearing Date: March 24, 2004 2 sessions

Total Forum Fees = \$1,350.00

1. The Arbitrator has assessed \$675.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$675.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 850.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 225.00

2. MLPFS is solely liable for:

<u>Member Fees</u>	= \$2,625.00
Total Fees	= \$2,625.00
<u>Less payments</u>	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 675.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 675.00

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


ARBITRATOR

Thomas A. Donovan

- Sole Public Arbitrator

Arbitrator's Signature

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Thomas A. Donovan
Sole Public Arbitrator

3-31-04

Signature Date

March 31, 2004

Date of Service (For NASD Dispute Resolution use only)