

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Mark and Nancy Carleton

and

Case Number: 03-03313
Hearing Site: Southfield, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and David R. Zoellner, Sr.

NATURE OF DISPUTE

Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

Mark and Nancy Carleton ("Claimants") were represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., West Bloomfield, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and David R. Zoellner, Sr. ("Zoellner"), hereinafter referred to as "Respondents," were represented by Dennis K. Egan, Esq. and Angela Emerling Bufford, Esq., Butzel Long, Bloomfield Hills, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about April 30, 2003. The Submission Agreement of Claimants Mark and Nancy Carleton was signed on or about April 28, 2003.

The Statement of Answer was filed jointly by Respondents MLPFS and Zoellner on or about July 2, 2003. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about June 15, 2003. The Submission Agreement of Respondent, David R. Zoellner, Sr., was signed on or about August 19, 2003.

CASE SUMMARY

Claimants asserted the following legal theories: breach of contract, common law fraud, conspiracy, promissory estoppel, conversion, negligence, malpractice, breach of fiduciary duty, and breach of Michigan securities law. The causes of action related to the purchase and sale of various unspecified unsuitable, high risk, high tech speculative securities and the misrepresentation of the goals and risks of the type of trading involved.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted defenses including the following: Claimants were not conservative investors; Respondents did not manage Claimants' accounts; Claimants knew and understood what the investments were at the time they made them; Respondents did not violate any organization rules; and Claimants' losses were caused by market conditions.

RELIEF REQUESTED

Claimants requested an award in the amount of \$129,435.00 as out-of-pocket losses, plus interest, costs, attorney 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 and arbitration forum fees be assessed against Claimants, that all references to this matter be expunged from Zoellner's CRD, and such other relief as is necessary 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").

The panel denied Respondents' Request for Sanctions.

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 David R. Zoellner, Sr., are jointly and severally liable for and shall pay to Claimants, Mark and Nancy Carleton, the sum of \$42,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive and exemplary damages, sanctions 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, Inc.

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 a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: June 2, 2004 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00
Pre-hearing conference: October 23, 2003 1 session

Six (6) Hearing sessions x \$1,125.00 = \$ 6,750.00
Hearing Dates: June 8, 2004 2 sessions
June 9, 2004 2 sessions
July 30, 2004 2 sessions

Total Forum Fees = \$ 8,325.00

The Arbitration Panel has assessed \$4,162.50 of the forum fees jointly and severally to Mark and Nancy Carleton.

The Arbitration Panel has assessed \$4,162.50 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and David R. Zoellner, Sr.

Fee Summary

Claimants, Mark and Nancy Carleton, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,162.50
Total Fees	= \$ 4,462.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,037.50

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., 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, Inc. and David R. Zoellner, Sr., are jointly and severally liable for:

Forum Fees	= \$ 4,162.50
Total Fees	= \$ 4,162.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,162.50

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

ARBITRATION PANEL

Veronique M. Liem, Esq. - Public Arbitrator, Presiding Chair
Frederick F. Fordon - Public Arbitrator
Laura M. Nelson, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Veronique M. Liem, Esq.

Veronique M. Liem, Esq.
Public Arbitrator, Presiding Chair

08/03/04

Signature Date

/s/ Frederick F. Fordon

Frederick F. Fordon
Public Arbitrator

08/03/04

Signature Date

/s/ Laura M. Nelson, Esq.

Laura M. Nelson, Esq.
Non-Public Arbitrator

08/03/04

Signature Date

08/04/04

Date of Service (For NASD office use only)

ARBITRATION PANEL

Veronique M. Liem, Esq. - Public Arbitrator, Presiding Chair
Frederick F. Fordon - Public Arbitrator
Laura M. Nelson, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Veronique M. Liem, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Frederick F. Fordon
Public Arbitrator

Signature Date

Laura M. Nelson

Laura M. Nelson, Esq.
Non-Public Arbitrator

8-3-04

Signature Date

Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

Signature Date

Frederick F. Fordon
Frederick F. Fordon
Public Arbitrator

8/3/04
Signature Date

Laura M. Nelson, Esq.
Non-Public Arbitrator

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NASD

NASD Dispute Resolution
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Veronique M. Liem, Esq. - Public Arbitrator, Presiding Chair
Frederick F. Fordon - Public Arbitrator
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Concurring Arbitrators:



Veronique M. Liem, Esq.
Public Arbitrator, Presiding Chair

8.3.2004
Signature Date

Frederick F. Fordon
Public Arbitrator

Signature Date

Laura M. Nelson, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)