

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

William T. Minor IRA (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Joseph M. Holcomb (Respondents)

Case Number: 03-03331

Hearing Site: Cincinnati, Ohio

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

REPRESENTATION OF PARTIES

Claimant William T. Minor IRA ("Minor") hereinafter referred to as "Claimant": Franklin R. Evans, Esq., Richman Law Offices, Cincinnati, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Joseph M. Holcomb ("Holcomb") hereinafter collectively referred to as "Respondents": Robert J. Hollingsworth, Esq. and Susan R. Bell, Esq., Cors & Bassett, LLC, Cincinnati, OH.

CASE INFORMATION

Statement of Claim filed on or about: April 30, 2003.

Claimant signed the Uniform Submission Agreement: April 23, 2003.

Joint Statement of Answer filed by Respondents on or about: June 30, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 23, 2003.

Respondent Holcomb signed the Uniform Submission Agreement: June 20, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; fraud; negligence; unsuitable investment recommendations; violations of State securities laws; violations of § 2310 Conduct Rules of NASD; violations of § 3010 Conduct Rules of NASD; breach of contract; and respondeat superior. The causes of action relate to various securities, including but not limited to, Xilinx, Inc., MCI Worldcom, Selectron Corp., Nortel Networks Corp., Microsoft, Internet Infrastructures, EMC Corp. Mass, Corning, Inc., Deutsche Telecom, Circuit City Stores, Inc., Applera CP-Celera Genomics, and AOL.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defense: failure to state a claim upon which relief can be granted; Claimant ignored Respondents' advice regarding excessive distributions and spending; Claimant failed to mitigate the alleged damages; Claimant

knowingly, willingly, and voluntarily assumed the risks associated with their investments and their investment strategy; Claimant, despite counseling from Respondents, failed to seek additional employment following his retirement at age 54, took excessive withdrawals from his account, and continued to live beyond his means, thus severely depleting his accounts; Claimant alleged damages were proximately caused by Claimant's failure to follow the advice of Respondents; Claimant's alleged damages resulted, in whole or in part, from Claimant's own acts, omissions or negligence; Claimant's losses were caused by unforeseeable market conditions, market forces, and market price fluctuations, and not by any act or omission of Respondents; at all times, Respondents acted in good faith, in a professional manner that was in accordance with industry practices and norms, and dealt fairly with Claimant; Claimant failed to allege any specific conduct that resulted in a breach of fiduciary duty by Respondents; Claimant did not rely to his detriment on any act or omission of Respondents; Respondents did not breach any duty or responsibility to Claimant with respect to suitability, securities laws, or any other sales practice issue; Respondents did not make any fraudulent and/or negligent representations to Claimant; Respondents did not violate any conduct rules or any other practice provisions of the NASD; there is no private right of action for violations of NASD rules; Claimant authorized and agreed to each and every transaction about which he complains; Claimant is barred, in whole or in part, by the doctrine of ratification and Claimant is precluded from disavowing the trades and/or investment decisions in hindsight; Claimant's claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel; Claimant failed to exercise the reasonable care than an ordinary prudent investor would exercise and failed to conduct financial affairs responsibly; Claimant's claims are barred, in whole or in part, by the doctrines of contributory negligence and comparative fault; Claimant's calculation of damages is speculative and cannot be demonstrated with any degree of certainty; punitive damages are unavailable to Claimant; and Claimant has filed his Statement of Claim in bad faith.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$214,624.53; attorneys' fees and costs of arbitration, including but not limited to expert witness fees, expenses and accounting fees; disgorgement of illicitly generated commissions and/or fees; lost interest as provided by the Ohio Securities Act; pre and post award interest at the statutory rate; and punitive damages.

Respondents requested dismissal of the Statement of Claim in its entirety; their costs including reasonable attorneys' fees; that forum fees be assessed against the Claimants; that all references to this matter be expunged from Respondents' Central Registration Depository records; and such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 29, 2004, the parties notified NASD Dispute Resolution that the parties had reached a settlement. In addition, by a letter dated January 6, 2005, the parties notified the

NASD that they had entered into a confidential settlement agreement and submitted a Withdrawal of Claim and Stipulation of Certain Facts Related to Expungement Application and a Stipulated Request for Expungement. The Withdrawal of Claim and Stipulation of Certain Facts Related to Expungement Application is annexed hereto as Exhibit "A".

The parties agreed that the 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 an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimant's claims are dismissed in their entirety.
2. All claims against Respondents Joseph M. Holcomb and Merrill Lynch, Pierce, Fenner & Smith Incorporated are withdrawn with prejudice.
3. Each party shall bear its own costs and expenses.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph M. Holcomb's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Joseph M. Holcomb must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. Any and all relief not specifically addressed herein, including punitive damages, 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 person at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & 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 conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: January 9, 2004 1 session	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$1,425.00
Refund Due Claimant	= \$ 562.50

2. Respondent Merrill Lynch is solely liable for:

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

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

All balances are due and payable to NASD Dispute Resolution.

NASD REGULATION

NASD Dispute Resolution
Arbitration No. 03-03331
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Parties' Signatures

X William T. Minor
William T. Minor
Claimant

1-22-05
Signature Date

Merrill Lynch, Pierce, Fenner & Smith, Incorporated
Respondent

Signature Date

By. _____

Joseph M. Holcomb
Respondent

Signature Date

Parties' Signatures

William T. Minor
Claimant

Signature Date

Merrill Lynch, Pierce, Fenner & Smith, Incorporated
Respondent

11/19/05
Signature Date

By: _____

Director / Senior Counsel

Joseph M. Holcomb
Respondent

Signature Date

Parties' Signatures


Willard T. Minor
Claimant

Signature Date

Merrill Lynch, Pierce, Fenner & Smith, Incorporated
Respondent

Signature Date

By: _____



Joseph M. Holcomb
Respondent

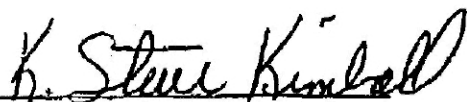


Signature Date

ARBITRATION PANEL

K. Steve Kimball, CFA	-	Public Arbitrator, Presiding Chair
Lisa Shusterman	-	Public Arbitrator
Stuart Arthur Reagan, Sr., CFA	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


K. Steve Kimball, CFA
Public Arbitrator, Presiding Chair

Feb 5, 2005
Signature Date

Lisa Shusterman
Public Arbitrator

Signature Date

Stuart Arthur Reagan, Sr., CFA
Non-Public Arbitrator

Signature Date

February 8, 2005
Date of Service (For NASD office use only)

NASD REGULATION

NASD Dispute Resolution
Arbitration No. 03-03331
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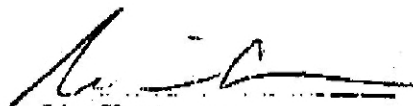
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Lisa Shusterman	-	Public Arbitrator
Stuart Arthur Reagan, Sr., CFA	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

K. Steve Kimball, CFA
Public Arbitrator, Presiding Chair

Signature Date



Lisa Shusterman
Public Arbitrator

2/1/05

Signature Date

Stuart Arthur Reagan, Sr., CFA
Non-Public Arbitrator

Signature Date

February 8, 2005
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Lisa Shusterman	-	Public Arbitrator
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Concurring Arbitrators' Signatures

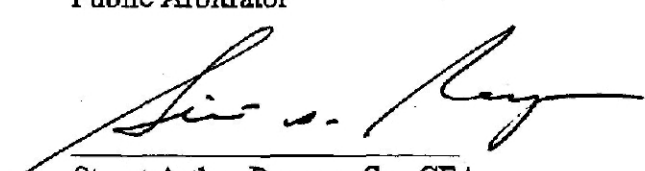
K. Steve Kimball, CFA
Public Arbitrator, Presiding Chair

Signature Date

Lisa Shusterman
Public Arbitrator

2-2-05

Signature Date



Stuart Arthur Reagan, Sr., CFA
Non-Public Arbitrator

2-2-05

Signature Date

February 8, 2005
Date of Service (For NASD office use only)

Exhibit A

**DIRECTOR OF ARBITRATION
NATIONAL ASSOCIATION OF SECURITIES DEALERS**

WILLIAM T. MINOR, ET AL.

Claimants,

Case No. 03-03331

vs.

MERRILL LYNCH, et al.

Respondents.

**WITHDRAWAL OF CLAIM AND
STIPULATION OF CERTAIN
FACTS RELATED TO
EXPUNGEMENT APPLICATION**

Claimants, William T. and Janet A. Minor, individually and jointly, hereby withdraw with prejudice their Statement of Claim ("the Claim") herein and the allegations therein as to Respondents Joseph M. Holcomb and Merrill Lynch Pierce, Fenner & Smith Incorporated.

Claimants do not oppose issuance of an order of expungement of this Claim from the CRD of Joseph M. Holcomb, with knowledge that the Order of Expungement may incorporate by reference, or in whole text, the following Stipulation of Certain Facts:

STIPULATION OF CERTAIN FACTS

1. The parties hereto agree that the Award section of the Arbitrators' order in this matter may contain the following statements:
2. "All claims against Respondents Joseph M. Holcomb and Merrill Lynch, Pierce, Fenner & Smith Incorporated are withdrawn with prejudice."
3. "Each party shall bear its own costs and expenses."


4. "The Panel directs the expungement of all reference to the above captioned arbitration from Respondent Joseph M. Holcomb's registration records maintained by the NASD Central Registration Depository ("DRC"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Joseph M. Holcomb must obtain confirmation of this Award from a court of competent jurisdiction before the CRD will execute this expungement directive."

5. "Respondent Joseph M. Holcomb has been a registered representative since March 1995 and, since that time has been a registered representative with Merrill Lynch, Pierce, Fenner & Smith Incorporated."

6. "During that time, except for the instant matter there have been no customer arbitrations commenced against him."

7. "Based upon the foregoing understanding of the circumstances, Claimants do not oppose the Panel's issuance of a directive of expungement of this Claim from Respondent Joseph M. Holcomb's CRD."

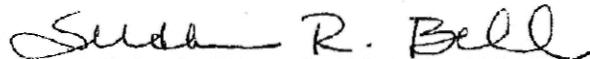
Dated: Cincinnati, Ohio
December 31, 2004



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Merrill Lynch, Pierce, Fenner & Smith
Incorporated