

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Irene Hanna

and

Case Number: 03-03474

Hearing Site: Southfield, Michigan

Names of Respondents

Merrill Lynch Pierce, Fenner & Smith, Inc.,  
Merrill Lynch, and Nicholas G. Vassilakis

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**NATURE OF DISPUTE**

Customer v. Member, Non-Member, and Associated Person

**REPRESENTATION OF PARTIES**

Irene Hanna ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., West Bloomfield, Michigan.

Merrill Lynch Pierce, Fenner & Smith, Inc. ("MLPFS") and Nicholas G. Vassilakis ("Vassilakis"), hereinafter referred to as "Respondents," were represented by Clarence L. Pozza, Esq., W. Scott Turnbull, Esq., and Donald W. Meyers, Esq. Miller Canfield, Paddock & Stone, P.L.L.C., Detroit, Michigan.

Merrill Lynch did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 12, 2003. The Submission Agreement of Claimant, Irene Hanna, was signed on or about February 28, 2003.

The Statement of Answer was filed jointly by Respondents, MLPFS and Vassilakis, on or about July 25, 2003.

**CASE SUMMARY**

Claimant asserted the following legal theories: breach of contract, common law fraud, conspiracy, promissory estoppel, negligence, malpractice, breach of fiduciary duty, breach of Michigan securities law, and violation of Michigan Consumer's Protection Law. The causes of action related to Respondents' recommendation and Claimant's purchase of an unspecified variable annuity. Claimant asserted that the investments recommended by Respondents were not suitable for her goals of preservation of capital and income.

Unless specifically admitted in their Answer, Respondents, MLPFS and Vassilakis, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim; Claimant is estopped by her conduct from asserting any and all claims alleged in the Statement of Claim; Claimant has, by her conduct, waived any claims; and Claimant assumed the risks of the transactions and investments that she made through Respondents.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$495,000.00 in out-of-pocket losses, interest, costs, attorney fees, exemplary and punitive damages, rescission, and additional damages as allowed by the panel.

Respondents, MLPFS and Vassilakis, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees, that Respondent Vassilakis' CRD record be expunged of all references to this matter and any further relief the panel deemed equitable and just.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents, Merrill Lynch Pierce, Fenner & Smith, Inc. and Nicholas G. Vassilakis, did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Respondent, Merrill Lynch, is not an NASD Member Firm. Respondent Merrill Lynch did not voluntarily submit to NASD arbitration, nor was there a contract to arbitrate disputes with Merrill Lynch presented. Therefore, Merrill Lynch is not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Merrill Lynch's voluntary submission, NASD does not have jurisdiction over this party.

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").

### **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 Nicholas G. Vassilakis, are jointly and severally liable for and shall pay to Claimant, Irene Hanna, the sum of \$200,000.00 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 exemplary and punitive damages 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:

Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates:	
August 10, 2004	2 sessions
August 11, 2004	2 sessions
August 12, 2004	2 sessions
Total Forum Fees	= \$6,750.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Irene Hanna.

The Arbitration Panel has assessed \$ 3,375.00 of the forum fees jointly and severally to Merrill Lynch Pierce, Fenner & Smith, Inc. and Nicholas G. Vassilakis.

**FEE SUMMARY**

Claimant, Irene Hanna, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,375.00
Total Fees	= \$ 3,675.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 3,200.00
Balance Due NASD Dispute Resolution	= \$ 2,000.00

Respondents, Merrill Lynch Pierce, Fenner & Smith, Inc., and Nicholas G. Vassilakis, are jointly and severally liable for:

Forum Fees	= \$ 3,375.00
Total Fees	= \$ 3,375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,375.00

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

**ARBITRATION PANEL**

Barry Goldman, Esq. - Public Arbitrator, Presiding Chair  
Richard Joseph Rankin, Esq. - Public Arbitrator  
Garrick A. Rollert, J.D. - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Barry Goldman, Esq.  
Barry Goldman, Esq.  
Public Arbitrator, Presiding Chair

08/13/04  
Signature Date

/s/ Richard Joseph Rankin, Esq.  
Richard Joseph Rankin, Esq.  
Public Arbitrator

08/13/04  
Signature Date

/s/ Garrick A. Rollert, J.D.  
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Non-Public Arbitrator

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08/13/04  
Date of Service (For NASD office use only)

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Award Page 5 of 5


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