
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Dr. V. John Wind and Gloria Wind, Trustees of the
V. John and Gloria Wind Living Trust Dtd 10/7/99

Case Number: 03-03497

Name of the Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

Hearing Site: St. Louis, Missouri

Nature of the Dispute: Customers vs. Member Firm

REPRESENTATION OF PARTIES

Claimants Dr. V. John and Gloria Wind, Trustees of V. John and Gloria Wind Living Trust Dtd. 10/7/99 ("John and Gloria Wind"), hereinafter collectively referred to as "Claimants": Steven Koslovsky, Esq. of the law firm Law Offices of Steven Koslovsky, LLP located in Maryland Heights, Missouri.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Respondent": J. Jackson, Esq. of the law firm Dorsey & Whitney, LLP located in Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on or about: May 13, 2003

Claimants, John and Gloria Wind, signed the Uniform Submission Agreement: May 30, 2003

Statement of Answer filed by Respondent, Merrill Lynch, on: October 6, 2003

Respondent, Merrill Lynch, did not submit a signed Uniform Submission Agreement.

On August 10, 2004, Respondent Merrill Lynch filed a Motion to Exclude Claimants' Evidence Relating to Damages and Renewed Motion for Attorneys' Fees and Costs. On August 11, 2004, Claimants filed their response to said Motions.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, suitability and fraud. The causes of action relate to investments in various technology stocks for Trust Account No. 683-18G16 and IRA Account No. 683-39198.

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Unless specifically admitted in its Answer, Respondent, Merrill Lynch, denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to set forth claims against Merrill Lynch upon which relief can be granted;
2. Claimants knowingly assumed the risk of their alleged losses, and Merrill Lynch properly disclosed any such risks to Claimant;
3. Merrill Lynch's recommendations were made in good faith and were based on sound facts;
4. Claimants were aggressive investors who wanted to be in technology stocks;
5. Merrill Lynch did not guarantee Claimants any return on any investments;
6. Claimants specifically approved, authorized and ratified the investments, trades and other actions complained of in the Statement of Claim. Accordingly, Claimants are precluded from asserting claims based on those decisions as grounds for recovery;
7. To the extent Claimants may have sustained damages, such damages were caused, in whole or in part, by the culpable conduct, fault, assumption of risk, negligence, intentional acts and/or other wrongful conduct on the part of Claimants and are, therefore, not recoverable from Merrill Lynch;
8. To the extent Claimants may have sustained damages, such damages were caused, in whole or in part, by the culpable conduct, fault, assumption of risk, negligence, intentional acts and/or other wrongful conduct on the part of third parties over which Merrill Lynch had no authority or control and are, therefore, not recoverable from Merrill Lynch;
9. Any "losses" sustained by Claimants resulted solely from their own investment decisions and from the vagaries and volatility of the securities markets over which Merrill Lynch had no control, and not from any alleged wrongdoing on the part of Merrill Lynch. Moreover, the possibility of any such "losses" was known to Claimants, who are long-time investors in the market, and who are intelligent professionals who specifically requested that their monies be placed in technology stocks that had a higher potential for gain, and a higher potential for volatility;
10. Merrill Lynch maintained an adequate and reasonable system of supervision and control over its registered representatives, including the Associated Person assigned to Claimants' accounts, Mr. Tom McDonough, at all relevant times herein. Furthermore, at all relevant times, Merrill Lynch acted in good faith, in accordance with industry standards and in compliance with all applicable securities laws and regulations;
11. Claimants failed to mitigate their alleged damages, and any award must be modified accordingly;
12. No conduct on the part of Merrill Lynch was the proximate cause of the "losses" claimed by Claimants;
13. Merrill Lynch and/or Mr. McDonough did not know any representation made was false (if it was false) and did not intend it to be so at the time it was made;

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14. Claimants were not induced to act by any such representation (if any was made);
15. Claimants have failed to allege fraud with sufficient particularity; and
16. All claims set forth in the Statement of Claim are barred by the doctrines of laches, estoppel and unclean hands.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$3,000,000.00
Punitive Damages	\$5,000,000.00
Interest	unspecified
Attorneys' Fees	unspecified

Respondent Merrill Lynch requested that Panel deny Claimants' Statement of Claim and dismiss it with prejudice; assess all forum fees, costs and expenses against Claimants; award Merrill Lynch its attorneys' fees, costs and expenses incurred; and award Merrill Lynch such other and further relief as Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Merrill Lynch did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

A telephonic pre-hearing conference was held on August 12, 2004 on Respondent's Motion to Exclude Claimants' Evidence on Damages and for Renewed Motion for Attorneys' Fees. In an Order issued on that same day, the Panel denied the Motion to Exclude Claimants' Evidence and judgment was reserved on the Motion for Attorneys' Fees until final determination of the hearing.

AWARD

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

1. Any and all claims asserted by Claimants, V. John and Gloria Wind, Trustees for the V. John and Gloria Wind Trust Dtd. 10/7/99, are denied.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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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 = \$ 600.00

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. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc., a party, is assessed the following fees:

Member surcharge = \$ 3,350.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 6,250.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 3,600.00

Pre-hearing conferences:

April 15, 2004	1 session
August 4, 2004	1 session
August 12, 2004	1 session

Four (4) Hearing sessions @ \$1,200.00 = \$ 4,800.00

Hearing Dates:

August 17, 2004	2 sessions
August 18, 2004	2 sessions

Total Forum Fees = \$ 8,400.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$4,200.00 jointly and severally to the Claimants John and Gloria Wind.
2. The Panel has assessed 50% of the total forum fees in the amount of \$4,200.00 solely to the Respondent, Merrill Lynch Pierce Fenner & Smith, Inc.

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FEE SUMMARY

1. Claimants, John and Gloria Wind, are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 13,800.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

ARBITRATION PANEL

Neil N. Bernstein	-	Public Arbitrator, Presiding Chairperson
C.J. McEnery, Jr.	-	Public Arbitrator
Matthew P. McCauley	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

 Neil N. Bernstein
 Public Arbitrator, Presiding Chairperson

 8/19/04
 Signature Date

 C.J. McEnery, Jr.
 Public Arbitrator

 8/19/04
 Signature Date

 Matthew P. McCauley
 Non-Public Arbitrator

 8/27/04
 Signature Date

 8/19/04
 Date of Service (For NASD Dispute Resolution use only)

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TOTAL FEE

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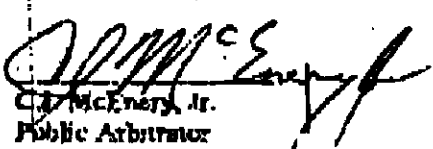
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Signature Date


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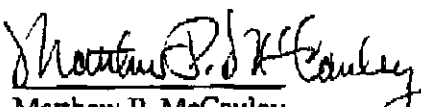
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Neil N. Bernstein
Public Arbitrator, Presiding Chairperson

Signature Date

C.J. McEnery, Jr.
Public Arbitrator

Signature Date


Matthew P. McCauley
Non-Public Arbitrator

27 August 04

Signature Date

Date of Service (For NASD Dispute Resolution use only)