

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Edward S. Wyrwa, Edward S. Wywra IRA, Eileen Wyrwa IRA and Edward S. Wyrwa Basic FBO Edward S. Wyrwa (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Samuel A. Annitto (Respondents)

Case Number: 03-03901

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants, Edward S. Wyrwa ("Edward Wyrwa"), Edward S. Wyrwa IRA ("Edward Wyrwa IRA"), Eileen Wyrwa ("Eileen Wyrwa") and Edward S. Wyrwa Basic FBO Edward S. Wyrwa ("FBO Wyrwa") hereinafter collectively referred to as "Claimants": Richard A. West, Esq., The Savage West Law Firm, Florham Park, NJ.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Samuel A. Annitto ("Annitto") hereinafter collectively referred to as "Respondents": Robert E. Goldberg, Esq., Director & Senior Counsel, Office of General Counsel, Merrill Lynch, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 27, 2003.

Amended Statement of Claim filed on or about March 31, 2004.

Claimant Edward S. Wyrwa signed the Uniform Submission Agreement: May 7, 2003.

Claimant Eileen Wyrwa signed the Uniform Submission Agreement: March 31, 2004.

Joint Statement of Answer filed by Respondents on or about: August 6, 2003.

Statement of Answer to Amended Statement of Claim filed on or about May 7, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 6, 2003.

Respondent Annitto signed the Uniform Submission Agreement: August 5, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: Unsuitability, Material Omissions and Misrepresentations, Fraud, Breach of Fiduciary Duty, Failure to Supervise, Respondeat Superior, and Violation of New Jersey's Securities Laws. The causes of action relate to equities, mutual funds, and an annuity.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing

set forth in the Statement of Claim and asserted the following defenses: failure to state a claim; authorization and ratification; no fiduciary duty was owed by Respondents to Claimants; the equitable defense of Claimant Edward Wyrwa's *unclean hands*; waiver and estoppel; assumption of risk; contributory negligence; proper supervision and good faith by Merrill Lynch; failure to mitigate alleged damages.

RELIEF REQUESTED

Claimants requested \$572,061.69 in compensatory damages, interest, costs, expenses, expert fees and attorneys' fees, and such other and further relief as the Panel deemed just and appropriate.

Respondents requested dismissal with prejudice of the Statement of Claim in its entirety and the award of costs, expenses attorneys' fees, the expungement of all references of this case from the CRD records of Respondent Samuel A. Annitto, and such other and further relief as is deemed proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 24, 2004, NASD Dispute Resolution was notified that the parties settled this matter and requested the entry of this Stipulated Award.

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. Claimants' claims are dismissed with prejudice.
2. Each party shall bear its own costs and expenses, except that Respondents shall bear the cost of obtaining the expungement referenced in paragraph 3, below.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Samuel A. Annitto'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 Samuel A. Annitto must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. 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 = \$375.00

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 Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party.

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$4,000.00
Total Member Fees	= \$7,000.00

Adjournment Fees

The following adjournment fees are assessed:

October 4-7, 2004, adjournment requested by Respondents	= Waived
October 5-8, 2004, adjournment requested by Respondents	= Waived
October 5-8, 2004, joint adjournment request to mediate	= \$1,200.00
Claimants' share	= \$600.00
Respondents' share	= \$600.00

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 @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: February 26, 2004	1 session
One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: August 9, 2004	1 session
Total Forum Fees	= \$2,200.00

1. The Panel has assessed \$1,100.00 of the forum fees jointly and severally against Claimants.

2. The Panel has assessed \$1,100.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$1,100.00
Total Fees	= \$2,075.00
Less payments	= \$1,250.00
Balance Due NASD Dispute Resolution	= \$ 825.00

2. Respondent Merrill Lynch is solely liable for:

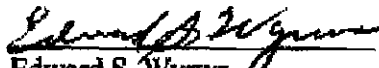
Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$4,950.00
Balance Due NASD Dispute Resolution	= \$2,050.00

4. Respondents are jointly and severally liable for:

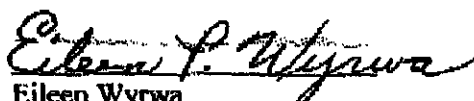
Adjournment Fee	= \$ 600.00
Forum Fees	= \$1,100.00
Total Fees	= \$1,700.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,700.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures


Edward S. Wyrwa
Claimant

10/20/04
Signature Date


Eileen Wyrwa
Claimant

10/20/04
Signature Date

Merrill Lynch, Pierce, Fenner & Smith Inc.
By: Robert E. Goldberg
Director & Senior Counsel
Respondent

Signature Date

Samuel A. Annitto
Respondent

Signature Date

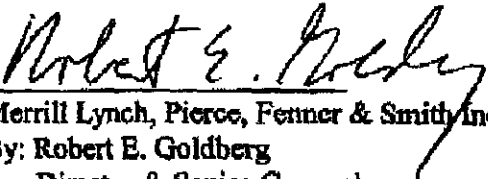
Parties' Signatures

Edward S. Wyrwa
Claimant

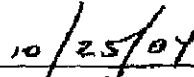
Signature Date

Eileen Wyrwa
Claimant

Signature Date



Merrill Lynch, Pierce, Fenner & Smith Inc.
By: Robert E. Goldberg
Director & Senior Counsel
Respondent



Signature Date



Samuel A. Annitto
Respondent



Signature Date

ARBITRATION PANEL

Donald Ferguson, Esq.
Lucienne Carasso Bulow
Dale Berman

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Donald Ferguson
Donald Ferguson, Esq.
Public Arbitrator, Presiding Chair

October 31, 2004
Signature Date

Lucienne Carasso Bulow
Public Arbitrator

Signature Date

Dale Berman
Non-Public Arbitrator

Signature Date

November 1, 2004

Date of Service (For NASD office use only)

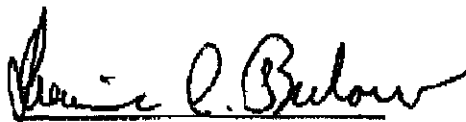
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Lucienne Carasso Bulow	-	Public Arbitrator
Dale Berman	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Donald Ferguson, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Lucienne Carasso Bulow
Public Arbitrator



Signature Date

Dale Berman
Non-Public Arbitrator

Signature Date

November 1, 2004
Date of Service (For NASD office use only)

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Donald Ferguson, Esq.	-	Public Arbitrator, Presiding Chair
Lucienne Carasso Bulow	-	Public Arbitrator
Dale Berman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Donald Ferguson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Lucienne Carasso Bulow
Public Arbitrator

Signature Date



Dale Berman
Non-Public Arbitrator

10/22/04

Signature Date

November 1, 2004
Date of Service (For NASD office use only)