

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Tammy Lynn Johnson and Tammy Lynn Johnson IRA (Claimants) v. Merrill Lynch,
Pierce, Fenner & Smith, Inc., Joseph M. Fitzpatrick, and Clarence I. Seese (Respondents)

Case Number: 03-03926

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Customers vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants Tammy Lynn Johnson ("Johnson") and Tammy Lynn Johnson IRA ("Johnson IRA") hereinafter collectively referred to as "Claimants"; David J. Van Dyke, Esq., Berman & Simmons, P.A., Lewiston, ME.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Joseph M. Fitzpatrick ("Fitzpatrick"), and Clarence I. Seese ("Seese") hereinafter collectively referred to as "Respondents": Michael A. Fitzhugh, Esq., Fitzhugh, Parker & Alvaro, LLP, Boston, MA.

CASE INFORMATION

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

Claimant Johnson signed the Uniform Submission Agreement: May 21, 2003.

Joint Statement of Answer filed by Respondents on or about: August 22, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: June 19, 2003.

Respondent Seese signed the Uniform Submission Agreement: September 12, 2003.

Respondent Fitzpatrick did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; breach of fiduciary duties; waste of assets, monies and credits; suitability; misrepresentations and omissions. Claimants' claim involved common stock and mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of not less than \$175,000.00; for punitive

and exemplary damages in the amount of \$225,000.00; attorneys' fees, interest and costs; and further and additional relief as the Panel deems just and appropriate.

Respondents requested that the claims be dismissed in their entirety and the damages alleged in the Statement of Claim be denied, and that Respondents be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Fitzpatrick 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, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondents made a motion to dismiss all claims against Respondent Fitzpatrick. After due consideration, the motion was granted by the Panel.

Claimants made a motion for the production of telephone records for Respondents Fitzpatrick and Seese. The Panel took the motion under advisement and during deliberations decided to deny the motion.

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.

AWARD

After considering the pleadings, and 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. Claimants' claims are denied in their entirety.
2. 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 persons at the time of the events giving rise to the dispute. Accordingly, 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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 17-19, 2004, adjournment by Claimants	= \$1,125.00
--	--------------

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: January 7, 2004 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: November 5, 2003 1 session	
January 28, 2004 1 session	

Five (5) Hearing sessions @ \$1,125.00	= \$ 5,625.00
Hearing Dates: May 18, 2004 2 sessions	
May 19, 2004 1 session	
May 20, 2004 2 sessions	

Total Forum Fees	= \$ 8,325.00
------------------	---------------

1. The Panel has assessed \$4,162.50 of the forum fees against Claimant.
2. The Panel has assessed \$4,162.50 of the forum fees against Respondent MLPFS.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$4,162.50
Total Fees	= \$5,587.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$4,162.50

2. Respondent MLPFS is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$4,162.50
Total Fees	= \$9,362.50
<u>Less payments</u>	<u>= \$5,230.00</u>
Balance Due NASD Dispute Resolution	= \$4,132.50

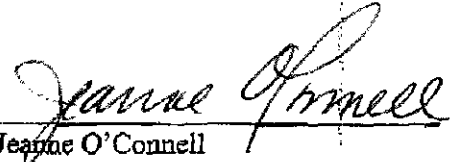
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Jeanne O'Connell	-	Public Arbitrator, Presiding Chair
Howard I. Wilgoren, Esq.	-	Public Arbitrator
Paul F. Marandett	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Jeanne O'Connell
Public Arbitrator, Presiding Chairperson

5/28/04

Signature Date

Howard I. Wilgoren, Esq.
Public Arbitrator

Signature Date

Paul F. Marandett
Non-Public Arbitrator

Signature Date

June 7, 2004

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 03-03926
Award Page 5 of 5

ARBITRATION PANEL

Jeanne O'Connell
Howard I. Wilgoren, Esq.
Paul F. Marandett

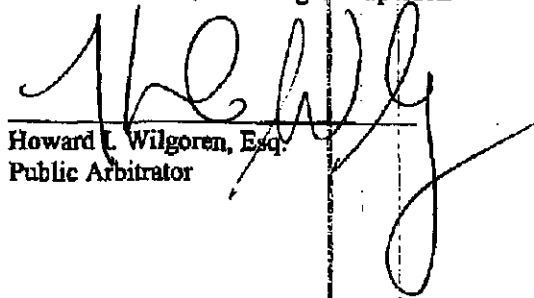
Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Jeanne O'Connell
Public Arbitrator, Presiding Chairperson

Signature Date



Howard I. Wilgoren, Esq.
Public Arbitrator

5/25/04
Signature Date

Paul F. Marandett
Non-Public Arbitrator

Signature Date

June 7, 2004
Date of Service (For NASD Dispute Resolution use only)