

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert L. and R. Darlene Anderson, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phil Scott, Respondents

Case Number: 03-03991

Hearing Site: Portland, Oregon

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

REPRESENTATION OF PARTIES

For Claimants:

Robert L. and R. Darlene Anderson
In Propria Persona
Brookings, Oregon

For Respondents:

Curt Roy Hinline, Esq.
Dorsey & Whitney
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: May 30, 2003

Claimants' Joint Uniform Submission Agreement signed: May 30, 2003

Joint Statement of Answer filed: August 19, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: July 2, 2003

Respondent Phil Scott's Uniform Submission Agreement signed: August 18, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, unsuitability, misrepresentation and omission of facts, violation of state securities laws, violation of NASD and NYSE rules, and failure to supervise. Claimants' allegations involve transactions in their margin account and relate to

Respondents' alleged failure to diversify their account, resulting in the over-concentration of their portfolio in Microsoft and Cisco.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$400,000.00 in compensatory damages, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On March 8, 2005, Respondent Phil Scott moved the Panel to recommend the expungement of all reference to the above-captioned arbitration from his registration records maintained by the NASD Central Registration Depository. The Panel set a hearing for the motion on November 30, 2005.

On March 17, 2005, Claimants' dismissed their Statement of Claim with prejudice.

On November 30, 2005, Respondent Scott and his counsel appeared before the Panel to present evidence as to why the above-captioned arbitration should be expunged from his registration record. Claimants made no appearance and filed no opposition to Respondent Scott's Motion to Expunge. The Panel determined that Claimants were properly served with Mr. Scott's Motion to Expunge, had due notice of the hearing on the motion, and that the arbitration of the expungement matter would proceed without Claimants present. After due deliberation, the Panel granted the motion.

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

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

1. Claimants' claims are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Phil Scott's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Phil Scott must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

The following adjournment fees are assessed:

June 1-3, 2004 adjournment requested by Claimant	= Waived
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Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00 /session	= \$3,375.00
Pre-hearing conferences:	
November 19, 2003	1 session
August 24, 2004	1 session
July 15, 2005	1 session
One (1) Hearing sessions @ \$1,125.00/session	= \$1,125.00
Hearing:	
November 30, 2005	1 session
Total Forum Fees	= \$4,500.00

1. The Panel assessed \$1,125.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$3,375.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants Robert L. and R. Darlene Anderson are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

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

3. Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Phil Scott are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,375.00
Less Payment made by Merrill Lynch, Pierce, Fenner & Smith Incorporated	= \$(3,200.00)
Balance Due NASD Dispute Resolution	= \$ 175.00

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

ARBITRATION PANEL

O. Meredith Wilson, Jr., Esq.
Andrew K. Chenoweth
Joyce L. Tyler

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

O. Meredith Wilson Jr.
O. Meredith Wilson, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Andrew K. Chenoweth
Public Arbitrator

Signature Date

Joyce L. Tyler
Non-Public Arbitrator

Signature Date

December 1, 2005
Date of Service

ARBITRATION PANEL

<i>O. Meredith Wilson, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Andrew K. Chenoweth</i>	-	<i>Public Arbitrator</i>
<i>Joyce L. Tyler</i>	-	<i>Non-Public Arbitrator</i>

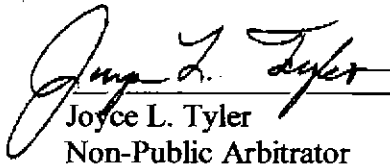
Concurring Arbitrators' Signatures

O. Meredith Wilson, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Andrew K. Chenoweth
Public Arbitrator

Signature Date


Joyce L. Tyler
Non-Public Arbitrator

12/01/05
Signature Date

Date of Service


ARBITRATION PANEL

<i>O. Meredith Wilson, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Andrew K. Chenoweth</i>	-	<i>Public Arbitrator</i>
<i>Joyce L. Tyler</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

O. Meredith Wilson, Jr., Esq.
Chair, Public Arbitrator

Signature Date



Andrew K. Chenoweth
Public Arbitrator

12-1-05

Signature Date

Joyce L. Tyler
Non-Public Arbitrator

Signature Date

December 2, 2005

Date of Service