

STIPULATED AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Mary R. Francis and MLPF&S CUST FPO
Mary R. Francis IRA,
FBO Mary R. Francis

v.

03-04124
Denver, Colorado

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and James F. Weaver, Jr.

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

REPRESENTATION OF PARTIES

Mary R. Francis and MLPF&S CUST FPO, Mary R. Francis IRA, FBO Mary R. Francis, hereinafter referred to as "Claimants," were represented by Donald C. Deagle, Esq., Deagle & Wolkin, P.C., Parker, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc., ("Merrill Lynch") and James F. Weaver, Jr., ("Weaver"), hereinafter referred to as "Respondents," were represented by Bill Powell Guest Esq., Day Edwards, Propester & Christensen, PC, Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about June 6, 2003. The Uniform Submission Agreement of Claimants was signed on or about April 28, 2003.

The Statement of Answer was filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and James F. Weaver, Jr., on or about August 5, 2003. The Uniform Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about August 1, 2003.

CASE SUMMARY

Claimants asserted the causes of action including the following: suitability, negligence, breach of contract, respondeat superior, and failure to supervise. Claimant asserted that the causes of action related to recommendation and sale of various unspecified securities. Claimants alleged that their entire account was invested in unsuitable equities with an unacceptable level of risk to principal.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted; Claimants' claims are barred by the applicable statute of limitations; Claimants' claims are barred by the doctrines of waiver, estoppel, ratification and laches; Claimants' claims are barred because the risks inherent in the investments at issue were fully disclosed or known to Claimants; Claimants' claims are barred because they suffered no damages by reason of the acts complained of in the Statement of Claim; and Claimants' alleged damages, if any, were proximately caused by their own conduct.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$50,000.00
Interest	Unspecified
Other Costs	Unspecified
Attorney's Fees	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondent, James Weaver, requested that this matter be expunged from his permanent registration record maintained by the Central Registration Department ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Respondent, James F. Weaver, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified through counsel at the pre-hearing conference is bound by the determination of the arbitrator on all issues submitted.

Prior to the hearing, the Parties fully and finally settled all claims by and between them. As part of their settlement agreement, the parties submitted a Motion for a Stipulated Award to the arbitrator for his consideration and request that it be entered.

The parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

Pursuant to the parties' agreement, and after considering the parties' submissions and representations, but without making any conclusions of law, the undersigned arbitrator orders as follows:

1. The parties have agreed to settle this matter for a sum certain to be paid by Respondent Merrill Lynch Pierce Fenner & Smith, Inc.;
2. Claimants' claims are hereby dismissed in their entirety with prejudice, and all other requests for relief are denied;
3. All parties are to bear their own attorney's fees;
4. Pursuant to the parties' stipulated request, the arbitrator enters a finding that the registered person was not involved in the alleged investment related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
5. The arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent James F. Weaver's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Weaver must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
6. Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
7. Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 175.00

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	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00

Forum Fees and Assessments

The arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
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Pre-hearing conference:	January 26, 2004	1 session
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Total Forum Fees	= \$ 450.00
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The arbitrator has assessed \$ 225.00 of the forum fees jointly and severally to Claimants, Mary R. Francis and MLPF&S CUST FPO, Mary R. Francis IRA, FBO Mary R. Francis.

The arbitrator has assessed \$ 225.00 of the forum fees jointly and severally to Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and James F. Weaver.

Fee Summary

Claimants, Mary R. Francis and MLPF&S CUST FPO, Mary R. Francis IRA, FBO Mary R. Francis, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
Forum Fees	= \$ 225.00
<u>Retention of Hearing Session Deposit Per Rule 10332 (f)</u>	= \$ 225.00
Total Fees	= \$ 625.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

<u>Member Fees</u>	= \$ 2,625.00
<u>Total Fees</u>	= \$ 2,625.00
<u>Less payments</u>	= \$ 2,625.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and James F. Weaver, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

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

ARBITRATOR

Malcolm T. Cleland - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

Malcolm T. Cleland
Public Arbitrator, Presiding Chair

Signature Date

11/22/04
Date of Service (For NASD office use only)

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

Member Fees	= \$ 2,625.00
Total Fees	= \$ 2,625.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and James F. Weaver, are jointly and severally liable for:


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ARBITRATOR

Malcolm T. Cleland - Public Arbitrator, Presiding Chair

Arbitrator's Signature:



Malcolm T. Cleland
Public Arbitrator, Presiding Chair

11/09/04
Signature/Date

11/22/04
Date of Service (For NASD office use only)