

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Donna M. Martin, Claimant v. Jason M. Gerber and Merrill Lynch, Pierce Fenner & Smith,
Incorporated, Respondents

Case Number: 03-04303

Hearing Site: Seattle, Washington

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

REPRESENTATION OF PARTIES

For Claimant:

Cabrelle M. Abel, Esq.
Preston, Gates, Ellis, LLP
Seattle, Washington

For Respondents:

Emilia M. DeMeo, Esq.
Merrill Lynch, Pierce, Fenner
& Smith, Incorporated
New York, New York

CASE INFORMATION

Statement of Claim filed: June 12, 2003

Claimant's Uniform Submission Agreement signed: June 12, 2003

Statement of Answer filed by Respondents: August 8, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission
Agreement signed: September 8, 2003

Respondent Jason M. Gerber's Uniform Submission Agreement signed: September 9, 2003

CASE SUMMARY

Claimant alleged negligence, breach of fiduciary duty, and breach of contract. Claimant's
allegations involved tax consequences of distributions from her IRA accounts.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$22,122.00, pre-judgment and post-judgment interest, forum fees, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, costs, and expungement of all reference to this matter from Respondent Jason M. Gerber's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents and Claimant advise that on or about October 27, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

The parties entered into an agreement to present to the Arbitrator a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of such an award, the written stipulation thereto, the Arbitrator hereby grants the motion and enters this award granting the following relief:

- 1) Pursuant to the confidential settlement agreement reached between all parties, all claims against Respondents Gerber and Merrill Lynch are dismissed with prejudice.
- 2) The Arbitrator recommends the expungement of all references to the above-captioned arbitration from Respondent Jason Gerber's registration records maintained by NASD's Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent Gerber must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) The Respondents will bear their own costs and expenses and any of Claimant's costs and expenses associated with the above-referenced arbitration, as determined by NASD-DR.
- 4) Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("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	= \$ 125.00
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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:

<u>Member Surcharge</u>	<u>= \$ 425.00</u>
Total Member Fees	= \$ 425.00

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:

One (1) pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: December 17, 2003 1 session	
Total Forum Fees	= \$ 450.00

As per the parties' agreement, forum fees in this matter are assessed jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Jason M. Gerber.

FEE SUMMARY

1. Claimant Donna M. Martin is charged with the following fees and costs:

Initial Filing Fee	= \$ 125.00
<u>Less payments</u>	<u>= \$(575.00)</u>
Refund Due Claimant Donna M. Martin	= \$(450.00)

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

Member Fees	= \$ 425.00
<u>Less payments</u>	<u>= \$ (725.00)</u>
Refund Due Respondent Merrill Lynch	= \$ (300.00)

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

Forum Fees	= \$ 450.00
<u>Less Payments by Merrill Lynch</u>	<u>= \$ 450.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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.

ARBITRATOR

Bernard F. Vail

Public Arbitrator

Arbitrator's Signature



Bernard F. Vail
Public Arbitrator

11/30/04
Signature Date

11/30/04
Date of Service