

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

John C. Zelling and Shelley M. Zelling, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Respondent

Case Number: 03-04781

Hearing Site: Las Vegas, Nevada

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Samuel B. Edwards, Esq.
Shepherd, Smith & Edwards,
L.L.P.
Houston, Texas

For Respondent:

Bruce W. Day, Esq.
Day Edwards Propester &
Christensen, P.C.
Oklahoma City, Oklahoma

CASE INFORMATION

Statement of Claim filed: June 26, 2003

Claimant John C. Zelling's Uniform Submission Agreement signed: June 20, 2003

Claimant Shelley M. Zelling's Uniform Submission Agreement signed: June 20, 2003

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated:
September 22, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission
Agreement signed: September 26, 2003

CASE SUMMARY

Claimants alleged breach of contract and warranties, promissory estoppel, violation of: consumer protection laws, federal securities laws, state securities statutes, and Nevada Revised Statutes, deceptive trade practices, intentional and negligent misrepresentation, unjust enrichment, breach of fiduciary duty, negligence, and secondary liability. Claimants' allegations involved failure to implement a financial plan as well as purchases of variable annuities and bonds.

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

RELIEF REQUESTED

Claimants requested \$1,000,000.00 in compensatory damages, lost opportunity costs, rescission, statutory damages, unspecified punitive damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs. Respondent further requested expungement of all reference to the above-captioned matter from Bill Pierce and James Porter's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

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 denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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 = \$ 375.00

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 = \$ 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:

July 20 – 23, 2005, adjournment requested by Respondent Merrill Lynch,
Pierce, Fenner & Smith, Incorporated = \$ 1,200.00

The Panel assessed the adjournment fee to Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

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 a single arbitrator @ \$ 450.00/session = \$ 900.00

Pre-hearing conferences: February 24, 2004 1 session
March 25, 2004 1 session

Two (2) pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00

Pre-hearing conferences: December 12, 2003 1 session
April 15, 2004 1 session

Six (6) hearing sessions @ \$1,200.00/session = \$ 7,200.00

Hearings: April 26, 2005 2 sessions

NASD Dispute Resolution
Arbitration No. 03-04781
Award Page 4 of 5

	April 27, 2005	2 sessions	
	April 28, 2005	2 sessions	
Total Forum Fees			= \$10,500.00

1. The Panel assessed \$5,250.00 of the forum fees jointly and severally to Claimants John C. Zelling and Shelley M. Zelling.
2. The Panel assessed \$5,250.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

Fee Summary

1. Claimants John C. Zelling and Shelley M. Zelling are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 5,250.00</u>
Total Fees	= \$ 5,625.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
Balance Due NASD Dispute Resolution	= \$ 4,050.00

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

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 5,250.00</u>
Total Fees	= \$13,450.00
<u>Less payments</u>	<u>= \$(7,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 5,900.00

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.

NASD Dispute Resolution
Arbitration No. 03-04781
Award Page 5 of 5


ARBITRATION PANEL

Rew R. Goodenow, Esq.
Michael B. Laikin, Esq.
Alan S. Mann

-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Rew R. Goodenow, Esq.
Chair, Public Arbitrator

4/29/05
Signature Date

Michael B. Laikin, Esq.
Public Arbitrator

Signature Date

Alan S. Mann
Non-Public Arbitrator

Signature Date

May 2, 2005
Date of Service

NASD Dispute Resolution
Arbitration No. 03-04781
Award Page 5 of 5

ARBITRATION PANEL

Rew R. Goodenow, Esq.
Michael B. Laikin, Esq.
Alan S. Mann

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Rew R. Goodenow, Esq.
Chair, Public Arbitrator

Signature Date

Michael B. Laikin, Esq.
Public Arbitrator

Signature Date


Alan S. Mann
Non-Public Arbitrator

4-29-05
Signature Date

May 2, 2005
Date of Service

COPY

NASD Dispute Resolution
Arbitration No. 03-04781
Award Page 5 of 5

ARBITRATION PANEL

Rew R. Goodenow, Esq.

Michael B. Laikin, Esq.

Alan S. Mann

-

-

-

Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Rew R. Goodenow, Esq.
Chair, Public Arbitrator

Signature Date



Michael B. Laikin, Esq.
Public Arbitrator



Signature Date

Alan S. Mann
Non-Public Arbitrator

Signature Date

Date of Service