

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Brandee Cotroneo, IRRA

Case Number: 03-04972

Names of the Respondents  
Merrill Lynch Pierce Fenner & Smith, Inc.  
Keith Dunn

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Brandee Cotroneo, IRRA, hereinafter referred to as "Claimant": Philip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, Maitland, Florida.

For Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Keith Dunn ("Dunn"), hereinafter collectively referred to as "Respondents": S. Lawrence Polk, Esq. and Bryan Ward, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: July 7, 2003.

Claimant signed the Uniform Submission Agreement on: June 16, 2003.

Statement of Answer filed by Respondents on or about: September 23, 2003.

Respondent MLPFS signed the Uniform Submission Agreement on: August 25, 2003.

Respondent Dunn signed the Uniform Submission Agreement on: August 29, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) unsuitability, 2) negligence, 3) breach of contract; and 4) breach of fiduciary duty. The causes of action relate to Claimant's investment in, among other things, mutual funds and common stock including, but not limited to, Agilent Technologies, Inc., America Online, Inc., Cisco Systems, Inc., Lucent, Enterprise Internet A, Goldman Sachs Internet, MFS Emerging Growth Fund and ML Focus Twenty, and unsuitable asset allocations in her IRRA and other accounts.

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

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$695,535.70; 2) unspecified punitive damages; 3) attorneys' fees; 4) costs; and 5) any further remedy

that the undersigned arbitrators (the "Panel") deemed just and equitable.

Respondents requested that the Panel: 1) dismiss the Statement of Claim in its entirety; 2) direct expungement of all references to this matter from Respondent Dunn's registration records maintained by the NASD Central Registration Depository ("CRD"); 3) assess all forum fees and costs against Claimant; 4) award reasonable attorneys' fees to Respondents; and 5) grant such other, further and different relief as is just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about August 18, 2006, Claimant filed with NASD Dispute Resolution a Notice of Voluntary Dismissal of Respondent Dunn, with prejudice. However, Respondent Dunn continued to be represented by counsel for expungement purposes.

At the evidentiary hearing, Claimant made an ore tenus Motion to Amend the Statement of Claim and narrowed the causes of action to the following: 1) unsuitability, 2) negligence, 3) breach of contract; and 4) breach of fiduciary duty. At the evidentiary hearing, the Panel granted the Claimant's Motion to Amend the Statement of Claim. Claimant did not proceed on the causes of action and issues plead in the original Statement of Claim.

At the evidentiary hearing, Respondent made an ore tenus Motion to Dismiss the Statement of Claim as to all investor accounts other than account number 651-84940 as set out in the original Statement of Claim. Claimant objected to the Motion. The Panel granted the Motion to Dismiss, in part, as to damages in the trust account and denied it otherwise.

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, 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:

All of Claimant's claims are denied.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dunn's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Dunn must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

The Panel finds that the investments were suitable in light of the market conditions and investor's stated objectives and risk tolerance, and the broker did not violate his duties.

Any and all claims for relief not specifically addressed herein, including Claimant's

requests for punitive damages and the parties' request for attorneys' fees, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure ("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	= \$375.00
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#### **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. Accordingly, Respondent MLPFS is a party and a member firm.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

There were no injunctive relief fees assessed during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 Panel @ \$1,200.00/session = \$1,200.00  
Pre-hearing conference: March 26, 2004 1 session

Seven (7) Hearing sessions @ \$1,200.00/session = \$8,400.00  
Hearing Dates: August 22, 2006 2 sessions

August 23, 2006 2 sessions

August 24, 2006 2 sessions

August 25, 2006 1 sessions

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Total Forum Fees = \$9,600.00

The Panel has assessed \$4,800.00 of the forum fees to the Claimant.

The Panel has assessed \$4,800.00 of the forum fees solely to Respondent MLPFS.

### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### Fee Summary

Claimant is solely liable for:

Initial Filing Fee = \$ 375.00

Forum Fees = \$ 4,800.00

Total Fees = \$ 5,175.00

Less payments = \$ 1,575.00

Balance Due NASD Dispute Resolution = \$ 3,600.00

Respondent MLPFS is solely liable for:

Member Fees = \$ 7,000.00

Forum Fees = \$ 4,800.00

Total Fees = \$11,800.00

Less payments = \$ 7,000.00

Balance Due NASD Dispute Resolution = \$ 4,800.00

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

### ARBITRATION PANEL

John P. Cullem, Esq.

Colleen Grace, Esq.

Mark M. Mercier

- Public Arbitrator, Presiding Chairperson

- Public Arbitrator

- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

                    /s/                      
John P. Cullem, Esq.  
Public Arbitrator, Presiding Chairperson

August 29, 2006  
Signature Date

                    /s/                      
Colleen Grace, Esq.  
Public Arbitrator


August 29, 2006  
Signature Date

                    /s/                      
Mark M. Mercier  
Non-Public Arbitrator

August 29, 2006  
Signature Date

August 29, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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John P. Cullem, Esq.  
Public Arbitrator, Presiding Chairperson

8/29/06  
Signature Date

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Colleen Grace, Esq.  
Public Arbitrator

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Signature Date

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Mark M. Mercier  
Non-Public Arbitrator

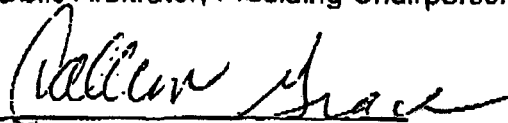
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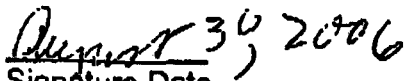
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