

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Stephen C. Mull

Case Number: 03-04994

Name of the Respondent
Merrill Lynch Pierce Fenner & Smith, Inc.

Hearing Site: Chicago, Illinois

NATURE OF THE DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

Arthur S. Gold, Esq., of Gold & Coulson, LLC located in Chicago, Illinois, represented Claimant Stephen C. Mull, ("Mull").

Andrew Fallon, Esq. and James P. Lucking, Esq., of Bingham McCutchen, LLP located in Boston, Massachusetts, represented Respondent Merrill Lynch Pierce Fenner & Smith, Inc., ("Merrill Lynch").

CASE INFORMATION

Claimant filed the Statement of Claim on or about July 8, 2003 and signed the Uniform Submission Agreement on July 11, 2003. Respondent filed a Statement of Answer on November 13, 2003 and signed the Uniform Submission Agreement on August 25, 2003.

CASE SUMMARY

Claimant Mull asserted the following causes of action: Unsuitable recommendations to concentrate assets in a high risk stock equities and failure of supervision and management contact.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief can be granted; Claimant suffered no damages by reason of any actions by Respondent; Respondent acted properly and in good faith with respect to Claimant's accounts; Claimant ratified Respondent's conduct; Claimant failed to mitigate damages; Claimant directed, approved and/or authorized each and every transaction for their account and/or ratified, accepted, acquiesced and confirmed in all respects such transactions; Claimant claims are barred by the equitable doctrines of estoppel, laches,

ratification and waiver; Respondent maintained an adequate and reasonable system of supervision and control over its employees, and at all times acted in good faith and did not at any time, directly or indirectly, induce any act or acts constituting a violation or cause of action, thus, Merrill Lynch is not subject either to "control person" or *respondent superior* liability; Claimant is not entitled to an award of attorneys' fees, punitive damages, interest or the costs of this proceeding.

RELIEF REQUESTED

Claimant Mull requested compensatory damages in the amount of \$800,000.00, treble damages in the amount of \$1,600,000.00, interest, attorney's fees, costs, and any such relief the Panel deems just and equitable.

Respondents requested denial and dismissal of claims.

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:

1. Any and all claims asserted by Stephen C. Mull against Merrill Lynch Pierce Fenner & Smith, Inc. are denied in their entirety.
2. Except for the forum fees associated with this matter, which are specified herein, the parties shall bear their own costs, including attorney's fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to 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

= \$ 500.00

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. Accordingly, Merrill Lynch, as a party, is assessed the following fees:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with Panel at \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: April 6, 2004	1 session
October 8, 2004	1 session
Eight (8) Hearing sessions at \$1,200.00	= \$ 9,600.00
Hearing Dates: October 26, 2004	2 sessions
October 27, 2004	2 sessions
October 28, 2004	2 sessions
October 29, 2004	2 sessions
Total Forum Fees	= \$12,000.00

The Panel assessed \$6,000.00 of the forum fees to Stephen C. Mull and assessed \$6,000.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith.

FEE SUMMARY

Claimant Stephen C. Mull is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,500.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$14,550.00
Less payments	= \$11,350.00
Balance Due NASD Dispute Resolution	= \$ 3,200.00

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

ARBITRATION PANEL

Susanne J. Hollander	-	Public Arbitrator, Presiding Chairperson
Michael S. Matek, Esq.	-	Public Arbitrator
Howard B. Silverman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Susanne J. Hollander

Susanne J. Hollander
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ Michael S. Matek

11/24/04

Michael S. Matek, Esq.
Public Arbitrator

Signature Date

/s/ Howard B. Silverman

11/23/04

Howard B. Silverman
Non-Public Arbitrator

Signature Date

11/24/04

Date of Service (For NASD Dispute Resolution office use only)

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