

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Children's Heart Center, P.C.

and

Case Number: 03-05513
Hearing Site: Troy, Michigan

Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

NATURE OF DISPUTE

Customer v. Member

REPRESENTATION OF PARTIES

Children's Heart Center, P.C. ("Claimant") was represented by Webb A. Smith, Esq., and Peter R. Albertins, Esq., Foster, Swift, Collins & Smith, P.C., Lansing, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent") was represented by Clarence L. Pozza, Jr., Esq., and Jeffrey Rogg, Esq., Miller, Canfield, Paddock and Stone, P.L.C., Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about July 28, 2003. The Submission Agreement of Claimant was signed on or about July 23, 2003.

The Statement of Answer was filed by Respondent on or about September 26, 2003. The Submission Agreement of Respondent was signed on or about August 6, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: violation of NASD Rules; breach of fiduciary duty; negligent supervision; unsuitability; failure to disclose material facts; negligence; respondeat superior; and breaches of contract, warranty, and promissory estoppel. The causes of action related to Claimant's allegation that Respondent, through its account manager, recommended unspecified inappropriate securities for a retirement account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; the Statement of Claim is barred by reason of the applicable statute of limitations or other periods of limitations; and the Statement of Claim is barred by reason of Claimant's negligence, comparative negligence and contributory negligence.

RELIEF REQUESTED

Claimant requested an award in the amount of \$244,000.00 in compensatory damages, plus \$100,000.00 in punitive damages, interest, attorneys' fees, costs and any and all other relief the panel deemed appropriate.

Respondent requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

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	= \$ 300.00
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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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

December 7-10, 2004, adjournment requested by Claimant	= \$ 1,125.00
April 12-14, 2005, adjournment requested jointly	= \$ 1,125.00

Forum Fees and Assessments

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

Three (3) Pre-hearing sessions with Panel x \$1,125.00	= \$ 3,375.00
Pre-hearing conferences:	
April 28, 2004	1 session
November 2, 2004	1 session
March 29, 2005	1 session
Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates:	
September 19, 2005	2 sessions
September 20, 2005	2 sessions
September 21, 2005	2 sessions
<hr/> Total Forum Fees	<hr/> = \$ 10,125.00

The Arbitration Panel has assessed \$5,062.50 of the forum fees to Children's Heart Center, P.C.

The Arbitration Panel has assessed \$5,062.50 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Children's Heart Center, P.C., is liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$ 1,125.00
Forum Fees	= \$ 5,062.50
<u>Total Fees</u>	<u>= \$ 6,487.50</u>
<u>Less payments</u>	<u>= \$ 1,987.50</u>
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

Member Fees	= \$ 5,200.00
Adjournment Fees	= \$ 1,125.00
Forum Fees	= \$ 5,062.50
<u>Total Fees</u>	<u>= \$11,387.50</u>
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,187.50

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

ARBITRATION PANEL

Richard Joseph Rankin, Esq. - Public Arbitrator, Presiding Chair
Lawrence Jay Ellenbogen, Esq. - Public Arbitrator
Larry C. Kreul - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Richard Joseph Rankin, Esq.
Richard Joseph Rankin, Esq.
Public Arbitrator, Presiding Chair

09/22/05
Signature Date

Lawrence Jay Ellenbogen, Esq.
Public Arbitrator

Signature Date

/s/ Larry C. Kreul
Larry C. Kreul
Non-Public Arbitrator

09/22/05
Signature Date

09/22/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
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