

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

David Siroospour, individually
and on behalf of his IRA and Trust Accounts

v.

03-05673
Denver, Colorado

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and David Cramer

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

David Siroospour, individually and on behalf of his IRA and Trust Accounts ("**Claimant**") was represented by Steve A. Miller, Esq., of Steve A. Miller, P.C., Denver, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**") and David Cramer ("**Cramer**"), hereinafter collectively referred to as "**Respondents**," were represented by J. David Jackson, Esq., Kristina Carlson, Esq., of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about August 1, 2003. The Submission Agreement of Claimant was signed on or about August 1, 2003.

The Statement of Answer was filed jointly by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and David Cramer, on or about October 10, 2003. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about September 26, 2003. The Submission Agreement of Respondent, David Cramer, was signed on or about October 6, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: fraud; breach of fiduciary duty; breach of duty of care; violation of the Colorado Securities Act, CRS § 11-51-604(4); and violation of NASD Conduct Rules 2110 and 2310. The causes of action related to Claimant's allegation that Respondents made unsuitable investments and generated excessive fees in his retirement account invested with Merrill Lynch's Consults program. Claimant alleged that due to Respondents' failure

to employ reasonable risk management to protect account gains, his accounts suffered substantial losses.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to set forth claims upon which relief can be granted; Claimant knowingly assumed the risks of his alleged losses and Respondents properly disclosed any such risks to Claimant; Claimant specifically approved, authorized and ratified the investments, trades and other actions during the period complained of in the Statement of Claim; to the extent that Claimant has suffered losses, such losses were caused, in whole or in part, by the culpable conduct, fault, assumption of risk, negligence, intentional acts and/or wrongful conduct on the part of third parties over which Respondents had no authority or control; at all relevant times, Respondents acted in good faith, in accordance with industry standards and in compliance with all applicable securities laws and regulations; and all claims set forth in the Statement of Claim are barred by the doctrines of laches, estoppel and unclean hands.

RELIEF REQUESTED

Claimant requested an award of \$1,400,000 in compensatory damages, plus punitive damages, interest, costs, attorney's fees and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents asked for the panel to order the expungement of any and all references to this matter from David Cramer's permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

At the arbitration hearing, Respondents asked for the panel to dismiss Claimant's claims. After deliberation the panel denied Respondents' Motion to Dismiss.

All parties agreed to the panel's composition.

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 originals 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. Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc., and David Cramer, are jointly and severally liable for and shall pay to Claimant, David Siroospour, individually and on behalf of his IRA and Trust Accounts, the sum of Two Hundred Thirty Six Thousand Seven Hundred Eighty Six Dollars and No Cents (\$236,786.00) in compensatory damages;
2. Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc., and David Cramer, are jointly and severally liable for and shall pay to Claimant, David Siroospour, individually and on behalf of his IRA and Trust Accounts, interest on the above-stated sum in the amount of Sixty Six Thousand Seven Hundred and Seven Dollars and No Cents (\$66,707.00);
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 500

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 = \$ 2,800
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 5,000

Adjournment Fees

Adjournments granted during these proceedings:

November 9-12, 2004 = \$ 1,200

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 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 the Chairperson x \$ 450	= \$ 450
Pre-hearing conference: 10/07/2004 1 session	
One (1) Pre-hearing session with Panel x \$ 1,200	= \$ 1,200
Pre-hearing conference: 02/20/2004 1 session	
Seven (7) Hearing sessions with Panel x \$ 1,200	= \$ 8,400
Hearing Dates: 06/14/2005 2 sessions	
06/15/2005 2 sessions	
06/16/2005 2 sessions	
06/17/2005 1 session	
Total Forum Fees	= \$ 10,050

The Arbitration Panel has assessed \$ 10,050 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

FEE SUMMARY

Claimant, David Siroospour, individually and on behalf of his IRA and Trust Accounts, is liable for:

Initial Filing Fee	= \$ 500
<u>Adjournment Fee</u>	= \$ 600
Total Fees	= \$ 1,100
<u>Less payments</u>	= \$ 1,700
Balance Refunded By NASD Dispute Resolution	= \$ 600

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

Member Fees	= \$ 8,550
Forum Fees	= \$ 10,050
Adjournment Fee	= \$ 600
Total Fees	= \$ 19,200
Less payments	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 10,650

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

ARBITRATION PANEL

Richard M. Reider – Non-Public Arbitrator, Presiding Chair
Gilbert M. Roman - Public Arbitrator
Ronald G. Guida - Public Arbitrator

Concurring Arbitrators:

Richard M. Reider
Non-Public Arbitrator, Presiding Chair

Signature Date

Gilbert M. Roman
Public Arbitrator

Signature Date

Ronald G. Guida
Public Arbitrator

Signature Date

6/24/05
Date of Service (NASD use only)

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

<u>Member Fees</u>	= \$ 8,550
<u>Forum Fees</u>	= \$ 10,050
<u>Adjournment Fee</u>	= \$ 600
<u>Total Fees</u>	= \$ 19,200
<u>Less payments</u>	= \$ 8,550
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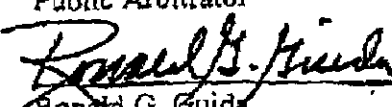
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