

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 03-05704

Harley J. Hanes, IRA, Claimant v. Merrill Lynch Pierce Fenner & Smith, Inc., Respondent

ATTORNEYS:

For Claimant, Harley J. Hanes, IRA, ("Claimant"), appeared Wm. Jemison Mims, Jr. Esq., of the firm Levin, Papantonio, Thomas, Mitchell, Echsner, Proctor, PA. Pensacola, FL.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., ("Respondent"), appeared R. Allen Kilgore, Jr., Esq., of the firm Maynard, Cooper & Gale P.C., Birmingham, AL.

NATURE OF DISPUTE: Customer vs. Member.

DATE FILED: August 4, 2003

CASE SUMMARY: Claimant alleged that Respondent breached its fiduciary duty to generate analyst reports that accurately reflect its true opinions, disclose all inherent conflicts of interest, and provide accurate financial advice. Claimant further alleged that Respondent intentionally and/or recklessly misrepresented and/or omitted material facts that were necessary to make informed investment decisions in the Claimant's portfolio. Additionally, Claimant alleged that Respondent participated in and/or aided in the publication of untrue statements of material fact or omission of material facts to the Claimant. Claimant also alleged that Respondent was in breach of their contract to engage in fair dealing with its clients. Claimant maintained that as a result of Respondent's actions, his account suffered financial losses.

ARBITRATOR'S REPORT : The central issue in this case is whether the Claimant relied on research reports supplied by Merrill Lynch to purchase stock. Claimant's statement of Claim does not show that he used any report supplied by Merrill or anyone else to make decision concerning which stocks to purchase for his portfolio.

Claim Data

Claim: \$15,198.20

Punitive: Unspecified

Interest: Unspecified

Attorney Fees: Unspecified

Filing Fees: Unspecified

Other: Unspecified

Award Data

Award: \$.00

Punitive: \$.00

Interest: \$.00

Attorney Fees: \$.00

Filing Fees: \$212.50

Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in their entirety. 2) All requests for attorney fees are denied. 3) All requests for punitive damages are denied. 4) All requests for interest are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 7) Respondent is liable and shall pay Claimant \$212.50 as reimbursement of one-half of the filing fee.

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OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc., has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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ARBITRATOR

Randall V. Webber - Sole Public Arbitrator

AFFIRMATION

I, Randall Webber, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Randall V. Webber, J.D.

10/15/04

Signature Date

October 19, 2004

Date of Service (For NASD-DR office use only)