

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Katherine Stuckey, M.D., Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Philip J. Loftus, Respondents

Case Number: 03-06227

Hearing Site: Portland, Oregon

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

REPRESENTATION OF PARTIES

For Claimant:

**Steve D. Larson, Esq.
Tina Beatty-Walters, Esq.
Stoll Stoll Berne Lokting
& Shlachter P.C.
Portland, Oregon**

For Respondents:

**Julie Thrall, Esq.
Dorsey & Whitney LLP
Seattle, Washington**

CASE INFORMATION

Statement of Claim filed: August 28, 2003

Claimant's Uniform Submission Agreement signed: August 27, 2003

Joint Statement of Answer filed by Respondents: December 23, 2003

**Respondent Merrill Lynch Pierce Fenner & Smith, Inc.'s Uniform Submission Agreement signed:
October 23, 2003**

Respondent Philip J. Loftus' Uniform Submission Agreement signed: November 24, 2003

CASE SUMMARY

Claimant alleged breach of fiduciary duty, unsuitability, negligence, violation of state laws, and failure to supervise. Claimant's allegations involved Respondents' alleged pursuit of an aggressive investment strategy concentrated in growth and technology stocks, including but not limited to Agilent Technologies, Inc., Applied Materials, Inc., AOL Time Warner, Inc., Biotech, B28 Internet, Comcast Corp., Computer Sciences Corp., Cisco Systems, Inc., EMC Corp., Ericsson L.M. Tel Co., International Paper Co., KEMET Corp., Nokia Corp., and Nortel Networks Corp.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant did not specify damages other than to allege that Claimant's losses were in excess of \$500,000.00.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: February 25, 2004 1 session	

Eight (8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
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Hearings:	January 4, 2005	2 sessions
	January 5, 2005	2 sessions
	January 6, 2005	2 sessions
	January 7, 2005	2 sessions

Total Forum Fees	= \$10,125.00
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1. The Panel assessed \$5,062.50 of the forum fees to Claimant Katherine Stuckey, M.D.
2. The Panel assessed \$5,062.50 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

1. Claimant Katherine Stuckey, M.D. is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,062.50
Total Fees	= \$ 5,362.50
<u>Less payments</u>	= \$ (8,175.00)
Refund Due from NASD Dispute Resolution	= \$ (2,812.50)

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,062.50
Total Fees	= \$10,262.50
<u>Less payments</u>	= \$ (9,125.00)
Balance Due NASD Dispute Resolution	= \$ 1,137.50

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

ARBITRATION PANEL

<i>Nancy E. Hochman, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Elizabeth L. Morrison</i>	-	<i>Public Arbitrator</i>
<i>Joseph W. Cheek</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

N.E. Hochman
Nancy E. Hochman, Esq.
Chair, Public Arbitrator

1/19/05
Signature Date

Elizabeth L. Morrison
Public Arbitrator

Signature Date

Joseph W. Cheek
Non-Public Arbitrator

Signature Date

January 20, 2005
Date of Service

ARBITRATION PANEL

Nancy E. Hochman, Esq.
Elizabeth L. Morrison
Joseph W. Cheek

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Nancy E. Hochman, Esq.
Chair, Public Arbitrator

Signature Date



Elizabeth L. Morrison
Public Arbitrator

1/20/05

Signature Date

Joseph W. Cheek
Non-Public Arbitrator

Signature Date

January 20, 2005

Date of Service

ARBITRATION PANEL

Nancy E. Hochman, Esq.
Elizabeth L. Morrison
Joseph W. Check

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Nancy E. Hochman, Esq.
Chair, Public Arbitrator

Signature Date

Elizabeth L. Morrison
Public Arbitrator

Signature Date

Joseph W. Check
Joseph W. Check
Non-Public Arbitrator

January 20, 2005
Signature Date

January 20, 2005
Date of Service