

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Anne M. Sherman (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and J. Colby King (Respondents)

Case Number: 03-06261

Hearing Site: Cincinnati, Ohio

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

REPRESENTATION OF PARTIES

Claimant Anne M. Sherman ("Sherman") hereinafter collectively referred to as "Claimant":
David M. Rickert, Esq., Weisbrod & Dankof, Dayton, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and J. Colby King ("King") hereinafter collectively referred to as "Respondents": James B. Rosenthal, Esq. and Ellen M. Kramer, Esq., Cohen Rosenthal & Kramer, LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: August 21, 2003.

Claimants signed the Uniform Submission Agreement: August 19, 2003.

Joint Statement of Answer filed by Respondents on or about: December 15, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement.

Respondent King did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; failure to supervise; and violation of NASD Rule 2110 and NYSE Rule 401 by failure to follow high ethical principles and good business practices. The causes of action relate to common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$164,083.00; punitive damages in the amount of \$300,000.00; attorneys' fees; interest; and costs.

Respondents requested dismissal of this arbitration; costs and attorneys' fees; and expungement

of any mention of Claimants' claims from the Form U-4 and related documentation maintained on behalf of Respondent King.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent King did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

The parties advised NASD Dispute Resolution ("NASD DR") that on or about September 14, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

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

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Pursuant to the confidential settlement agreement reached between the Claimants and Respondents, all claims against the Respondents are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent J. Colby King's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent King must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Each party will bear their own costs and expenses associated with the above-referenced arbitration.
4. 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 = \$300.00

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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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 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. Forum fees associated with these proceedings are:

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

Pre-hearing conference: March 29, 2004 1 session

Total Forum Fees = \$1,125.00

1. In accordance with the parties' agreement, Respondent Merrill Lynch has been assessed \$1,125.00 of the forum fees.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimants because this office was notified by the parties that they settled this matter within eight business days of the first scheduled hearing.

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$6,325.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

Anne M. Sherman

Anne M. Sherman
Claimant

10-18-04
Date

Merrill Lynch, Pierce, Fenner & Smith Inc.
Respondent

Date

J. Colby King
Respondent

Date

Attorneys for Parties Signatures

David Rickert

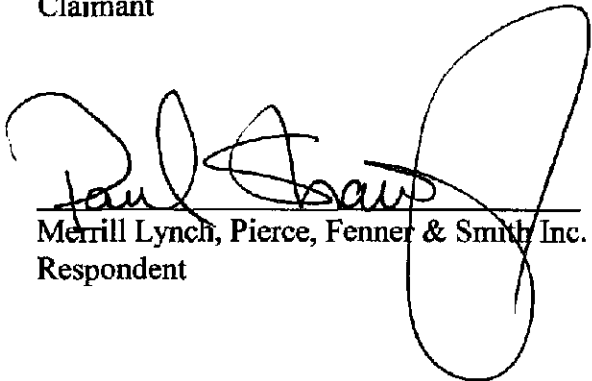
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Fax (937) 643-0777

James B. Rosenthal, Esq.
Ellen M. Kramer, Esq.
Cohen Rosenthal & Kramer LLP
1468 West Ninth Street, Suite 705
Cleveland, Ohio 44113
Tel. (216) 781-7956
Fax (216) 781-8061

Parties' Signatures

Anne M. Sherman
Claimant

Date



Paul Saur
Merrill Lynch, Pierce, Fenner & Smith Inc.
Respondent



Date




J. Colby King
Respondent



Date

Attorneys for Parties Signatures

David Rickert, Esq.
Weisbrod & Dankof
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ARBITRATION PANEL

Randall Scott Strause, Esq.	-	Public Arbitrator, Presiding Chair
Terry F. Peppard, Esq.	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.



Randall Scott Strause, Esq.
Public Arbitrator, Presiding Chair

11/30/04
Signature Date

Terry F. Peppard, Esq.
Public Arbitrator

Signature Date

Bert Cliff
Non-Public Arbitrator

Signature Date

December 17, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

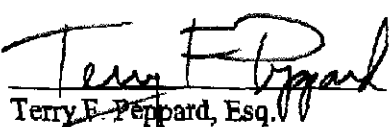
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Terry F. Peppard, Esq.	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

Randall Scott Strause, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Terry F. Peppard, Esq.
Public Arbitrator

Signature Date

Bert Cliff
Non-Public Arbitrator

Signature Date

December 17, 2004

Date of Service (For NASD office use only)

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Randall Scott Strause, Esq.	-	Public Arbitrator, Presiding Chair
Terry F. Peppard, Esq.	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

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Randall Scott Strause, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Terry F. Peppard, Esq.
Public Arbitrator

Signature Date



Bert Cliff
Non-Public Arbitrator

12-16-04
Signature Date

December 17, 2004
Date of Service (For NASD office use only)