

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Names of Claimants

Kenneth I. Gould and
Gail M. Gould, Jointly and
for their Individual Accounts

vs.

Case Number: 03-06311
Hearing Site: Nashville, Tennessee

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
Gerald R. Browne and
Frank S. Browne

NATURE OF CASE

Customers v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Kenneth I. Gould and Gail M. Gould, jointly and for their individual accounts ("Claimants") were represented by Michael Lynch, Esq. Hooper & Weiss, LLC, Orlando, Florida.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") was represented by Daniel J. Reiser, Esq., Bressler, Amery & Ross, P.C., Morristown, New Jersey.

Gerald R. Browne and Frank S. Browne were represented by Julian W. Friedman, Esq. Stillman & Friedman, P.C., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 2, 2003.

The Uniform Submission Agreements of Claimants were signed on or about June 25, 2003.

The Statement of Answer was filed jointly by Merrill Lynch, Gerald R. Browne and Frank S. Browne on or about November 20, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability, fraud, negligence, breach of contract, breach of fiduciary duty, securities laws violations, respondeat superior, and failure to supervise. The causes of action related to Claimants' allegations that the investments in Cisco,

Northern Telecom, Microsoft, and JDU were unsuitable for their financial circumstances.

Unless specifically admitted in their Answer, all Respondents 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 the doctrines of laches, waiver, ratification and estoppel; the Statement of Claim is barred by the statute of limitations; and Respondents acted in good faith and in a commercially reasonable manner while servicing Claimants' accounts.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$102,436.14
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

All Respondents requested that the claims asserted against them be denied in their entirety, that they be awarded their costs and attorneys' fees and that the panel recommend that all references to this matter be expunged from the CRD records of Gerald R. Brown and Frank S. Brown.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Merrill Lynch, did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared through counsel at the pre-hearing conference, is bound by the determination of the arbitration panel on all issues submitted.

Prior to the hearing and upon review of the pleadings and related materials exchanged by the parties, Claimants dismissed Gerald R. Browne and Frank S. Browne. Merrill Lynch and Claimants subsequently reached a settlement of the remaining claims on January 7, 2005.

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 the NASD Dispute Resolution (the "NASD").

AWARD

After considering the parties' submissions and representations, but without making any conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimants' claims, having been withdrawn, are 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;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Gerald Browne's and Frank Browne's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Gerald Browne and Frank Browne must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney 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

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 persons 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

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

The Hearing Dates were scheduled on January 10-12, 2005.

The parties advised NASD that this matter settled on January 7, 2005.

= \$ 300.00

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 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 Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: March 9, 2004 1 session

Total Forum Fees = \$1,125.00

The panel has assessed \$562.50 of the forum fees jointly and severally to Claimants, Kenneth I. Gould and Gail M. Gould.

The panel has assessed \$562.50 of the forum fees jointly and severally to Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Gerald R. Browne and Frank S. Browne.

Pursuant to NASD Code of Arbitration Procedure Rule 10332(f): Claimants' Hearing Session Deposit of \$562.50 is retained by NASD.

FEE SUMMARY

Claimants, Kenneth I. Gould and Gail M. Gould, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Retention of Hearing Session Deposit Per Rule 10332 (f)	= \$ 562.50
Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 562.50</u>
<u>Total Fees</u>	<u>= \$1,575.00</u>
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

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

Member Fees	= \$5,200.00
<u>Three-Day Cancellation Fee</u>	= \$ 150.00
Total Fees	= \$5,350.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Gerald R. Browne and Frank S. Browne, are jointly and severally liable for:

Forum Fess	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

Robert J Warner, Jr., LLB - Public Arbitrator, Presiding Chair
Ralph S. Paden - Public Arbitrator
Richard G. Isaac - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert J. Warner, Jr., LLB
Robert J Warner, Jr., LLB
Public Arbitrator, Presiding Chair

02/04/05
Signature Date

/s/ Ralph S. Paden
Ralph S. Paden
Public Arbitrator

02/28/05
Signature Date

/s/ Richard G. Isaac
Richard G. Isaac
Non-Public Arbitrator

02/04/05
Signature Date

03/02/05
Date of Service (For NASD office use only)

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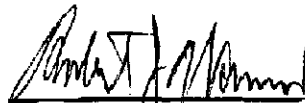
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Public Arbitrator, Presiding Chair

2/4/05
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Signature Date

Richard G. Isaac
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Public Arbitrator, Presiding Chair

Signature Date



Ralph S. Paden
Public Arbitrator

2-28-05

Signature Date

Richard G. Isaac
Non-Public Arbitrator

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