

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Kenneth W. and Frances M. Nettles

and

Case Number: 03-06350  
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
and Jodie S. Wilson

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Kenneth W. and Frances M. Nettles ("**Claimants**") were represented by Brian Turner, Esq., Heard, Robbins, Cloud, Lubel & Greenwood, Austin, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Merrill Lynch**") and Jodie S. Wilson ("**Wilson**"), hereinafter collectively referred to as "**Respondents**," were represented by Jack D. Ballard, Esq., The Ballard Law Firm, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 2, 2003. The Uniform Submission Agreement of Claimants, Kenneth W. and Frances M. Nettles, was signed on or about August 1, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jodie W. Wilson, on or about November 3, 2003. The Uniform Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about October 3, 2003. The Uniform Submission Agreement of Respondent, Jodie S. Wilson, was signed on or about October 29, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, omission of facts, misrepresentations and suitability. The causes of action related to various unspecified investments in Claimants' accounts at Merrill Lynch.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jodie W. Wilson, denied the allegations made in the Statement of Claim and asserted defenses including the following: to the extent Claimants incurred any damages, such damages were attributable to market conditions and/or Claimants' own negligence and not to any acts or omissions of Respondents; estoppel; ratification; failure to mitigate; assumption of risk by Claimants; failure to state a claim; and that Respondents acted in good faith and in a commercially reasonable manner with respect to Claimants' accounts.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$240,799.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Wilson requested expungement of all reference to this matter from her CRD.

### **OTHER ISSUES CONSIDERED & DECIDED**

Claimants and Respondents advised NASD that on or about November 19, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

Through their counsel, Claimants and Respondents stipulated that Respondent Wilson was not involved in any sales practice violations in connection with Claimants' accounts.

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 NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Claimants' claims against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jodie S. Wilson, are dismissed with prejudice;
- 2.) The panel recommends the expungement, of all references to the above captioned arbitration from Respondent, Jodie S. Wilson's, registration record maintained by NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent, Jodie S. Wilson, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any and all relief not specifically addressed herein, including attorneys' fees and costs is denied and all claims are dismissed 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 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 = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

### **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 3, 2004 1 session	
One (1) Hearing session x \$1,125.00	= \$1,125.00
Hearing Date: December 1, 2004 1 session	
Total Forum Fees	= \$2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to Kenneth W. and Frances M. Nettles.

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jodie S. Wilson.

### **Fee Summary**

Claimants, Kenneth W. and Frances M. Nettles, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ .00

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

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ .00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jodie S. Wilson, are jointly and severally liable for:

Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

**ARBITRATION PANEL**

Jack Chapline Vaughan, Esq. - Public Arbitrator, Presiding Chair  
Russell E. Rains, Esq. - Public Arbitrator  
Jonathan Rada, CFP - Non-Public Arbitrator

Concurring Arbitrators:

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Jack Chapline Vaughan, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Russell E. Rains, Esq.  
Russell E. Rains, Esq.  
Public Arbitrator

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December 29, 2004  
Signature Date

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Jonathan Rada  
Jonathan Rada, CFP  
Non-Public Arbitrator

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December 28, 2004  
Signature Date


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December 29, 2004  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-06350  
Stipulated Award Page 5 of 5

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12-29-04  
Signature Date

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Jonathan Rada, CFP  
Non-Public Arbitrator

12/28/04  
Signature Date

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Date of Service (For NASD office use only)