

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimant

Carolyn McBride

v.

03-06447
Minneapolis, Minnesota

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and Dearn Hemphill

Nature of Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

Carolyn McBride ("Claimant") was represented by Wm. Jemison Mimms, Jr., Esq., of Levin Papantonio, Thomas, Eschner & Proctor, P.A., Pensacola, Florida.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Dearn Hemphill ("Hemphill") hereinafter collectively referred to as ("Respondents"), were represented by Julie Wilson Portera, Esq., of Maynard Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

The Statement of Claim was filed on or about August 29, 2003. The Submission Agreement of Claimant was signed on or about August 29, 2003.

The Statement of Answer was filed jointly by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Dearn Hemphill, on or about November 24, 2003. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about December 20, 2003.

Respondents, Merrill Lynch and Hemphill, filed a Motion to Strike and for More Definite Statement of Claim on or about November 24, 2003. Claimant filed a Response in Opposition on or about December 10, 2003.

CASE SUMMARY

Claimant asserted causes of action including the following: breach of fiduciary duty, fraud, negligent misrepresentation, negligence, violation of blue sky laws. The causes of action related to Claimant's allegation that Respondents failed to properly allocate her portfolio, recommended unsuitable

securities, through the use of fraudulent analyst reports, and churned her account. Claimant further alleged that the analyst reports were predicated on the overvaluing of stocks to protect Merrill Lynch's investment banking relationship with outside companies.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Claimant's claims are barred by the applicable statutes of limitation; Claimant's claims are barred by waiver, ratification, acquiescence and estoppel; Respondents were not the proximate cause of Claimant's alleged losses; any right of recovery is limited by the doctrine of laches; Claimant's losses, if any, were market losses that were not caused by Respondents and for which Respondents should not be held liable; and Respondents conducted themselves in a professional manner, did not breach any duties owed to Claimant, and acted in good faith and without any knowledge of any wrongdoing or improper activity in the Claimant's accounts.

RELIEF REQUESTED

Claimant requested an award of \$202,413.17 in compensatory damages, plus punitive damages, interest, costs, attorneys' fees and any other damages the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents asked for such award to include an order directing that the CRD record of Dearl Hemphill be expunged of all references to this case.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing, the parties fully and finally settled all claims by and between them. As part of their settlement agreement, the parties submitted a Stipulated Award Directing Expungement to the Panel for its consideration and requested that it be entered.

Respondent, Dearl Hemphill, did not file with NASD Dispute Resolution a properly executed submission to arbitrate, but is required to submit pursuant to Rule 10301 of the NASD Code of Arbitration Procedure ("the Code"), and having answered the claim, Respondent Hemphill is bound by the determination of the Panel on all issues submitted.

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Claimant's claims, having been withdrawn, are hereby dismissed with prejudice in their entirety;
2. The arbitrators recommend the expungement of all reference to the above captioned arbitration from Respondent, Dearl Hemphill'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, Dearl Hemphill, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

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
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 2,750

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 the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: 06/14/2004 1 session

Two (2) Pre-hearing sessions with Panel x \$ 1,125 = \$ 2,250

Pre-hearing conferences: 03/26/2004 1 session

04/01/2004 1 session

Total Forum Fees = \$ 2,700

The Arbitration Panel has assessed \$ 1,350 of the forum fees to Carolyn McBride.

The Arbitration Panel has assessed \$ 1,350 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., and Dearn Hemphill.

EEE SUMMARY

Claimant, Carolyn McBride, is liable for:

Initial Filing Fee	= \$ 300
Forum Fees	= \$ 1,350
Total Fees	= \$ 1,650
Less payments	= \$ 1,425
Balance Due NASD Dispute Resolution	= \$ 225

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

Member Fees	= \$ 5,200
Total Fees	= \$ 5,200
Less payments	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Dearl Hemphill, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,350
<u>Total Fees</u>	= \$ 1,350
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,350

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

ARBITRATION PANEL

Joyce G. Gordon, JD - Public Arbitrator, Presiding Chair
Jeffrey W. Jacobs, Esq. - Public Arbitrator
Harold A. Daniels - Non-Public Arbitrator

Concurring Arbitrators:

Joyce G. Gordon, JD
Public Arbitrator, Presiding Chair

Signature Date

Jeffrey W. Jacobs, Esq.
Public Arbitrator

Signature Date

Harold A. Daniels
Non-Public Arbitrator

Signature Date

9/7/05
Date of Service (NASD use only)

NASD Dispute Resolution
Arbitration No. 03-06447
Stipulated Award Page 5 of 5

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Dearn Hemphill, are jointly and severally liable for:

Forum Fees	= \$ 1,350
Total Fees	= \$ 1,350
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,350

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Jeffrey W. Jacobs, Esq. - Public Arbitrator
Harold A. Daniels - Non-Public Arbitrator

Concurring Arbitrators:


Joyce G. Gordon, JD
Public Arbitrator, Presiding Chair

9-6-05
Signature Date

Jeffrey W. Jacobs, Esq.
Public Arbitrator

Signature Date

Harold A. Daniels
Non-Public Arbitrator

Signature Date

9/7/05
Date of Service (NASD use only)

NASD Dispute Resolution
Arbitration No. 03-06447
Stipulated Award Page 5 of 5

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Dearn Hemphill, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,350
<u>Total Fees</u>	= \$ 1,350
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Concurring Arbitrators:

Joyce G. Gordon, JD
Public Arbitrator, Presiding Chair

Jeffrey W. Jacobs, Esq.
Public Arbitrator

Harold A. Daniels
Non-Public Arbitrator

Signature Date

2-31-05
Signature Date

Signature Date

9/7/05
Date of Service (NASD use only)

NASD Dispute Resolution
Arbitration No. 03-06447
Stipulated Award Page 5 of 5

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Dearn Hemphill, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,350
<u>Total Fees</u>	= \$ 1,350
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Concurring Arbitrators:

Joyce G. Gordon, JD
Public Arbitrator, Presiding Chair

Signature Date

Jeffrey W. Jacobs, Esq.
Public Arbitrator

Signature Date

Harold A. Daniels

Harold A. Daniels
Non-Public Arbitrator

Sep 6, 2005

Signature Date

9/7/05

Date of Service (NASD use only)