

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Names of Claimants

James R. and Karen C. McGovern

and

Case Number: 03-06471
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Miles Bruce Potter and
Kevin Brent Roberts

NATURE OF DISPUTE

Customers v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

James R. and Karen C. McGovern ("**Claimants**") were represented by Michael Falick, Esq., Rothfelder & Falick, LLP, Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Merrill Lynch**"), Miles Bruce Potter ("**Potter**") and Kevin Brent Roberts ("**Roberts**"), hereinafter collectively referred to as "Respondents," were represented by Martha F. McDugald, Esq., The Ballard Law Firm, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about September 8, 2003. The Uniform Submission Agreement of Claimants, James R. and Karen C. McGovern, was signed on or about August 29, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Miles Bruce Potter and Kevin Brent Roberts, on or about November 20, 2003. The Uniform Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on or about October 14, 2003. The Uniform Submission Agreement of Respondent Potter was signed on or about November 19, 2003. The Uniform Submission Agreement of Respondent Roberts was signed on or about November 19, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: misrepresentations, omissions, breach of fiduciary duty, and failure to supervise. The causes of action related to investments held in Claimants' accounts at Merrill Lynch.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Miles Bruce Potter and Kevin Brent Roberts, 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; waiver; assumption of risk by Claimants and failure to state a claim.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$622,682.00
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 Potter requested expungement of all reference to this matter from his CRD. Respondent Roberts requested expungement of all reference to this matter from his CRD.

OTHER ISSUES CONSIDERED & DECIDED

Claimants and Respondents advised NASD that on or about December 13, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

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

- 1.) Claimants' claims against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Miles Bruce Potter and Kevin Brent Roberts, are dismissed with prejudice;
- 2.) The panel recommends the expungement, of all references to the above captioned arbitration from Respondent, Miles Bruce Potter'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, Miles Bruce Potter, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) The panel recommends the expungement, of all references to the above captioned arbitration from Respondent, Kevin Brent Roberts', registration record maintained by NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent, Kevin Brent Roberts, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 4.) Other the Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) 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 = \$ 375.00

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	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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 \$1,200.00	= \$1,200.00
Pre-hearing conference: April 1, 2004 1 session	
One (1) Hearing sessions x \$1,200.00	= \$1,200.00
Hearing Date: December 15, 2004 1 session	
Total Forum Fees	= \$2,400.00

The Arbitration Panel has assessed \$600.00 of the forum fees, jointly and severally, to James R. and Karen C. McGovern.

The Arbitration Panel has assessed \$1,800.00 of the forum fees, jointly and severally, to Merrill Lynch, Pierce, Fenner & Smith, Inc., Miles Bruce Potter and Kevin Brent Roberts.

Fee Summary

Claimants, James R. and Karen C. McGovern, are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$ 1,575.00
Refund to Claimants	= \$ 600.00

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

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Miles Bruce Potter and Kevin Brent Roberts, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,800.00
<u>Total Fees</u>	= \$ 1,800.00
<u>Less payments</u>	= \$.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,800.00

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

ARBITRATION PANEL

Sharon J. Hemphill, Esq. - Public Arbitrator, Presiding Chair
Donald H. Dilmore, Sr. - Public Arbitrator
Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Sharon J. Hemphill
Sharon J. Hemphill, Esq.
Public Arbitrator, Presiding Chair

February 8, 2005
Signature Date

/s/ Donald H. Dilmore
Donald H. Dilmore, Sr.
Public Arbitrator

February 11, 2005
Signature Date

/s/ Larry J. Sklar
Larry J. Sklar
Non-Public Arbitrator

February 8, 2005
Signature Date

March 2, 2005
Date of Service (For NASD office use only)

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

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Miles Bruce Potter and Kevin Brent Roberts, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,800.00
<u>Total Fees</u>	= \$ 1,800.00
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Donald H. Dilmore, Sr. - Public Arbitrator
Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

Sharon J. Hemphill
Sharon J. Hemphill, Esq.
Public Arbitrator, Presiding Chair

2-8-05
Signature Date

Donald H. Dilmore, Sr.
Donald H. Dilmore, Sr.
Public Arbitrator

Signature Date

Larry J. Sklar
Larry J. Sklar
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Miles Bruce Potter and Kevin Brent Roberts, are jointly and severally liable for:

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Total Fees	= \$ 1,800.00
Less payments	= \$.00
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Concurring Arbitrators:

Sharon J. Hemphill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald H. Dilmore, Sr.
Public Arbitrator

2/11/05
Signature Date

Larry J. Sklar
Non-Public Arbitrator

Signature Date

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Donald H. Dilmore, Sr. - Public Arbitrator
Larry J. Sklar - Non-Public Arbitrator

Concurring Arbitrators:

Sharon J. Hemphill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Donald H. Dilmore, Sr.
Public Arbitrator

Signature Date



Larry J. Sklar
Non-Public Arbitrator

7/8/05
Signature Date

Date of Service (For NASD office use only)