

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Patricia A. Daniels and Patricia A. Daniels (IRA) (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Richard M. Ina, and Michael Pinto (Respondents)

Case Number: 03-09146

Hearing Site: Cleveland, Ohio

Nature of the Dispute: Customer vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants Patricia A. Daniels ("Daniels"), Patricia A. Daniels IRA ("Daniels IRA") hereinafter referred to as "Claimants": J. Michael Gatien, Esq., N. Canton, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Richard M. Ina ("Ina"), and Michael Pinto ("Pinto") hereinafter collectively referred to as "Respondents": Ari H. Jaffe, Esq., Kohrman Jackson & Krantz, PLL, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: December 24, 2003.

Claimants' Motion To Assess Costs and Reply to Respondents' Consolidated Motion to Dismiss and Answer filed on or about: April 19, 2004.

Claimants signed the Uniform Submission Agreement: December 15, 2003.

Joint Statement of Answer and Motion to Dismiss Respondent Pinto filed by Respondents on or about: April 8, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: January 26, 2004.

Respondent Ina signed the Uniform Submission Agreement: February 6, 2004.

Respondent Pinto signed the Uniform Submission Agreement: February 3, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; breach of contract; breach of fiduciary duty; breach of NASD Rules 2120 and 2310; breach of Ohio Revised Code; breakpoint sales; failure to supervise; common law negligence; and fraud. The causes of action relate to common stocks and mutual funds.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$253,000.00; rescission; additional damages caused by the Respondents' failure to meet its supervisory obligations and unsuitable sales of Class B and C shares of mutual funds; punitive damages in the amount of \$1,000,000.00; lost opportunity damages; damages incurred as a result of breakpoint sales violations; interest from the date of judgment pursuant to Ohio law at the rate of 10% per annum; prejudgment interest pursuant to Ohio Revised Code Section 1343.03 at the rate of 10% per annum from the date of Respondents' breach of the brokerage agreement; expert witness fees; filing and forum fees; attorneys' fees; and such other and further relief that the Panel deems to be appropriate.

Respondents requested dismissal of all claims; and costs, expenses, and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing in this matter, Respondent Pinto filed a Motion to Dismiss at the conclusion of Claimants' case. The Panel granted the Motion.

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.

AWARD

After considering the pleadings, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed in their entirety.
2. 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 = \$500.00

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. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: July 12, 2004 1 session	

Nine (9) Hearing sessions @ \$1,200.00	= \$10,800.00
Hearing Dates: May 9, 2005 2 sessions	
May 10, 2005 2 sessions	
May 11, 2005 2 sessions	
May 12, 2005 3 sessions	

Total Forum Fees	= \$12,000.00
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1. The Panel has assessed \$6,000.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$6,000.00 of the forum fees jointly and severally against Respondents Merrill Lynch and Ina.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$6,000.00
Total Fees	= \$6,500.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$4,800.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch and Ina are jointly and severally liable for:

Forum Fees	= \$6,000.00
Total Fees	= \$6,000.00

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<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,000.00

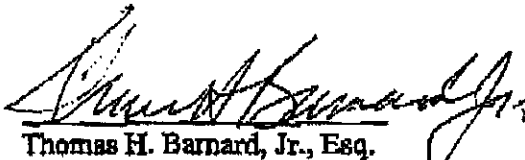
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Thomas H. Barnard, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Kathleen P. Helbig	-	Public Arbitrator
Edward L. Roth	-	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 which is my award.



Thomas H. Barnard, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kathleen P. Helbig
Public Arbitrator

Signature Date

Edward L. Roth
Non-Public Arbitrator

Signature Date

May 18, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


Thomas H. Barnard, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Kathleen P. Helbig	-	Public Arbitrator
Edward L. Roth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Thomas H. Barnard, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Kathleen P. Helbig
Public Arbitrator

Signature Date 5/18/05

Edward L. Roth
Non-Public Arbitrator

Signature Date

MAY 18, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Thomas H. Barnard, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Kathleen P. Helbig	-	Public Arbitrator
Edward L. Roth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

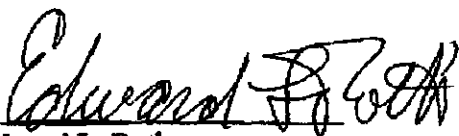
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Thomas H. Barnard, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kathleen P. Helbig
Public Arbitrator

Signature Date



Edward L. Roth
Non-Public Arbitrator

5-17-05
Signature Date

May 18, 2005

Date of Service (For NASD Dispute Resolution use only)