

**STIPULATED AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Christopher Glauch and Melissa Glauch

v.

04-00210

Denver, Colorado

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,  
Carl Hoover and Scott Thisted

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Nature of Dispute: Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Christopher Glauch and Melissa Glauch ("Claimants") were represented by Chad P. Hemmat, Esq., of Anderson Hemmat & Levine, L.L.C., Denver, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), Carl Hoover ("Hoover") and Scott Thisted ("Thisted"), hereinafter collectively referred to as ("Respondents") were represented by Bill P. Guest, Esq., of Day Edwards Propester & Christensen, PC, Oklahoma City, Oklahoma.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 8, 2004. The Submission Agreement of Claimants was signed on or about November 23, 2003.

The Statement of Answer was filed jointly by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Carl Hoover, and Scott Thisted, on or about March 22, 2004. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about March 1, 2004. The Submission Agreement of Respondent, Carl Hoover, was signed on or about April 17, 2004. The Submission Agreement of Respondent, Scott Thisted, was signed on or about March 4, 2004.

**CASE SUMMARY**

Claimants asserted causes of action including the following: breach of contract, breach of fiduciary duty, violation of blue sky laws, negligence, failure to supervise, misrepresentations and fraud. The causes of action related to Claimants' allegation that Respondents failed to honor Claimants' general investment objectives and instead purchased high-tech stocks such as Cisco, EMC, and Sun Microsystems. Claimants asserted that these investments were unsuitable and made their portfolio overly concentrated in the high-tech sector. Claimants further alleged that Respondents did not

implement either risk controls or hedge considerations that would have minimized their losses through diversification.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants failed to state a claim upon which relief can be granted; Claimants' claims are barred by the doctrines of waiver, estoppel, and ratification; Claimants' claims are barred because Respondents had a good faith basis for their recommendations, if any; Claimants' claims are barred because the risks inherent in the investments at issue were fully disclosed or known and Claimants assumed those risks; and Claimants' claims are barred because they have suffered no damages by reason of the acts complained of in the Statement of Claim and Claimants' alleged damages, if any, were proximately caused by their own conduct.

### **RELIEF REQUESTED**

Claimants requested an award of \$300,000 in compensatory damages, plus \$300,000 in punitive damages, attorneys' fees, costs, interest, a tax offset and any other relief 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 records of Carl Hoover and Scott Thisted 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.

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. Claimants' 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 Respondents, Carl Hoover's and Scott Thisted'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, Respondents, Carl Hoover and Scott Thisted, 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 = \$ 375

#### **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	= \$ 2,250
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 4,000

#### **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 = \$ 1,200

Pre-hearing conference: 06/28/2004 1 session

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Total Forum Fees = \$ 1,200

The Arbitration Panel has assessed \$ 600 of the forum fees jointly and severally to Christopher Glauch and Melissa Glauch.

The Arbitration Panel has assessed \$ 600 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., Carl Hoover and Scott Thisted.

**FEE SUMMARY**

Claimants, Christopher Glauch and Melissa Glauch, are jointly and severally liable for:

Initial Filing Fee	= \$ 375
<u>Forum Fees</u>	= \$ 600
Total Fees	= \$ 975
<u>Less payments</u>	= \$ 1,575
Balance Refunded By NASD Dispute Resolution	= \$ 600

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

<u>Member Fees</u>	= \$ 7,000
Total Fees	= \$ 7,000
<u>Less payments</u>	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Carl Hoover and Scott Thisted, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 600
Total Fees	= \$ 600
<u>Less payments</u>	= \$ 600
Balance Due NASD Dispute Resolution	= \$ 0

**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**

Michael J. Norton, Esq. - Public Arbitrator, Presiding Chair

Robert D. Greenlee - Public Arbitrator

Patti Fellows Peters - Non-Public Arbitrator

Concurring Arbitrators:

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Michael J. Norton, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Robert D. Greenlee  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Patti Fellows Peters  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

9/8/05  
\_\_\_\_\_  
Date of Service (NASD use only)

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Patti Peters  
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Patti Fellows Peters  
Non-Public Arbitrator

9/7/05  
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Signature Date

9/2/05  
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Date of Service (NASD use only)