

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Sandra A. Rhoden

Case Number: 04-00937

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.; and
DoDee Frost Crockett

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Sandra A. Rhoden, hereinafter referred to as "Claimant": Charles M. Hamilton, Esq., of the Law Offices of French & Hamilton, located in Dallas, Texas.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and DoDee Frost Crockett ("Crockett"), hereinafter collectively referred to as "Respondents": John P. Kincade, Esq., of the firm of Winstead Sechrest & Minick, P.C., located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: February 12, 2004.

Claimant signed the Uniform Submission Agreement: February 12, 2004.

Joint Statement of Answer filed by Respondents on: July 15, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 30, 2004.

Respondent Crockett signed the Uniform Submission Agreement: July 9, 2004.

Respondents' Hearing Memorandum filed on: May 31, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: Securities Fraud under 10b-5; negligence; breach of fiduciary duty; Securities Fraud under the Texas Securities Act; violation of the Texas deceptive Trade Practices Act; statutory and common law fraud; negligent supervision; and breach of contract. These causes of action related to Respondents recommending and making inappropriate and unsuitable purchases and recommendations of, including a disproportionate purchase of in-house Merrill Lynch products.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. The Statement of Claim fails to particularize facts establishing a legal theory under which Respondents could be held liable for any damages;
3. The claims are barred by all applicable statutes of limitations and/or statutes of repose;
4. Claimant is barred from any recovery because she instructed, directed, authorized, consented to, acquiesced in, and/or ratified all transactions in her accounts;
5. Any monetary losses Claimant allegedly suffered were caused by the investment decisions she made and/or were due to historical, market or economic conditions that were beyond the control of Respondents;
6. Respondents are not liable to Claimants because, at all times relevant herein, Respondents acted properly, in good faith, and in a commercially reasonable manner with respect to Claimant's accounts;
7. Neither Merrill Lynch nor Crockett ever guaranteed any level of return on Claimant's investments;
8. Claimant's claims are barred, in whole or in part, by reason of her contributory and/or comparative negligence. Any losses suffered by Claimant resulted from her own actions or the actions of persons or entities that were not affiliated with Respondents;
9. Claimants claims are barred, in whole or in part, by the principles of waiver, satisfaction, estoppel, and laches;
10. Merrill Lynch is not liable to Claimant for negligent supervision because Merrill Lynch had established procedures and a system of applying these procedures that were designed to prevent and detect the alleged violations at issue in this case. Even if Merrill Lynch failed to follow its own internal policies, no private cause of action exists based upon a firm's failure to comply with its own supervisory rules;
11. Claimant is barred from recovery because she failed to mitigate her alleged losses or damages and failed to exercise the degree of diligence required in handling her investments;
12. Claimant is barred from recovery because Claimant was apprised fully of the nature of her investments, and all facts material to her investment decisions, through discussions and meetings with Crockett;
13. Claimant is barred from recovery in whole or in part as a result of her "unclean hands"; and,
14. Respondents affirmatively invoke the limitations and protections as to exemplary damages and punitive damages under Chapter 41 of the Texas Civil Practice and Remedies Code, the Texas Constitution, and the United States Constitution.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages
Punitive Damages

Approximately \$50,000.00
Unspecified amount pursuant to

Interest	statute
Attorneys' Fees	Pre- and post judgment
Other Costs	Pursuant to Texas statute
Other Monetary/Non-Monetary Relief if any:	Unspecified
	As determined by the Panel.

At hearing, Claimant requested:

1. Return of loss on investment;
2. Interest at 7.5% on loss on investment;
3. \$25,000.00 lost opportunity damages;
4. Out of pocket expenses of approximately \$600.00;
5. Attorney's fees;
6. Loss of income (4 weeks at \$1,000.00 per day);
7. Unspecified punitive damages; and,
8. Donation of the punitive damages to NASD Customer Clinic.

Respondents Merrill Lynch and Crockett requested:

1. That Claimant's Statement of Claim be dismissed with prejudice;
2. That Claimant take nothing;
3. That Respondents be awarded their reasonable and necessary attorneys' fees, forum fees, and arbitration costs, including refund of the member surcharge;
4. That this Complaint/Proceeding be expunged from Crockett's CRD records; and,
5. All other relief to which they may be entitled.

OTHER ISSUES CONSIDERED AND DECIDED

At hearing, Respondents moved to dismiss the Statement of Claim. Upon review of the arguments presented by counsel, the Panel denied the Motion.

AWARD

After considering the pleadings, 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. The Statement of Claim is dismissed and denied in its entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent DoDee Frost Crockett'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 DoDee Frost Crockett must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this award; and,
4. 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 = \$ 175.00

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. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following member fees were assessed:

Member surcharge = \$ 875.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 1,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$600.00	= \$ 450.00
Pre-hearing conference: September 30, 2004 1 session	
Six (6) Hearing sessions @ \$600.00	= \$ 3,600.00
Hearing Dates: June 15, 2005 3 sessions	
June 16, 2005 3 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 4,050.00

The Panel has assessed \$1,012.50 of the forum fees to Claimant Sandra A. Rhoden, and \$3,037.50 of the forum fees, jointly and severally, to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and DoDee Frost Crockett.

FEE SUMMARY

Claimant Sandra A. Rhoden is solely liable for:

Initial Filing Fee = \$ 175.00

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Forum Fees	= \$ 1,012.50
Total Fees	= \$ 1,187.50
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 412.50

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

Member Fees	= \$ 2,625.00
Less payments	= \$ 3,375.00
Balance Applied to Forum Fees	= \$ 750.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and DoDee Frost Crockett are jointly and severally liable for:

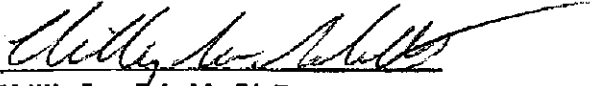
Forum Fees	= \$ 3,037.50
Less payments	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 2,287.50

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

ARBITRATION PANEL

Phillip Lee Scheldt, Ph.D - Public Arbitrator, Presiding Chairperson
Michael E. Rohde, Esq. - Public Arbitrator
Peter J. Conlon, Jr. - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Phillip Lee Scheldt, Ph.D
Public Arbitrator, Presiding Chairperson

6/30/2005
Signature Date

Michael E. Rohde, Esq.
Public Arbitrator

Signature Date

Peter J. Conlon, Jr.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Forum Fees	= \$ 1,012.50
Total Fees	= \$ 1,187.50
Less payments	= \$ 775.00
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Balance Applied to Forum Fees	= \$ 750.00

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Forum Fees	= \$ 3,037.50
Less payments	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 2,287.50

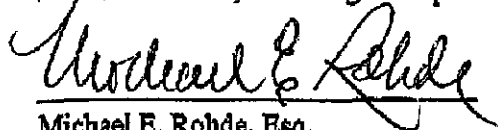
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Public Arbitrator, Presiding Chairperson



Michael E. Rohde, Esq.
Public Arbitrator

Signature Date

6/31/05
Signature Date

Peter J. Conlon, Jr.
Non-Public Arbitrator

Signature Date

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Total Fees	= \$ 1,187.50
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 412.50

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

Member Fees	= \$ 2,625.00
Less payments	= \$ 1,875.00
Balance Applied to Forum Fees	= \$ 750.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and DoDee Frost Crockert are jointly and severally liable for:

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Less payments	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 2,287.50

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Phillip Lee Scheldt, Ph.D
Public Arbitrator, Presiding Chairperson

Signature Date

Michael E. Rohde, Esq.
Public Arbitrator

Signature Date



Peter J. Conlon, Jr.
Non-Public Arbitrator

4 July 05

Signature Date

Date of Service (For NASD Dispute Resolution office use only)