

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-00999

Brenda Hauck

Name of the Respondent

Hearing Site: Charlotte, North Carolina

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Claimant, Brenda Hauck, hereinafter referred to as "Claimant", was represented by Jeffrey B. Musslewhite, Woska, Hayes, L.L.P., Kingwood, Texas and GERAL D. Jowers, Jr., Esq, Suggs & Kelly, P.A., Columbia, South Carolina.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent", was represented by Brian A. Comer, Esq. and James Lehman, Esq., Nelson Mullins Riley & Scarborough, L.L.P., Columbia, South Carolina.

**CASE INFORMATION**

Statement of Claim filed on February 4, 2004.

Claimant signed the Uniform Submission Agreement on December 6, 2003.

Statement of Answer filed by Respondent on May 28, 2004.

A representative of Respondent executed the Uniform Submission Agreement on May 28, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: breach of fiduciary duty, unsuitability, failure to supervise, negligence, breach of contract, violation of know your customer rule, and violation of Blue Sky laws. The causes of action relate to the purchase and sale of various stocks and mutual funds.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory/comparative negligence, failure to state a claim upon which relief may be granted, Respondent acted in good faith, ratification, Claimant failed to exercise due diligence, waiver, estoppel, ratification, laches, failure to mitigate, and statute of limitations.

RELIEF REQUESTED

Claimant in her Statement of Claim requested:

Compensatory Damages	\$50,000.00
Punitive Damages	unspecified amount
Interest	unspecified amount
Attorneys' Fees	unspecified amount
Other Costs	unspecified amount

Respondent in its Statement of Answer requested the dismissal of the Statement of Claim, and the costs and expenses associated with defending the claim.

AWARD

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

1. All claims against Respondent are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00
Total Member Fees	= \$2,625.00

Forum Fees and Assessments

The Arbitrator 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 a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: January 28, 2005 1 session

One (1) Pre-hearing session with Panel @ \$600.00 = \$ 600.00  
Pre-hearing conference: October 11, 2004 1 session

Four (4) Hearing sessions @ \$600.00 = \$2,400.00  
Hearing Dates: February 14, 2005 2 sessions  
February 15, 2005 2 sessions

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Total Forum Fees = \$3,450.00

1. The Arbitrator has assessed \$1,725.00 of the forum fees to Claimant.
2. The Arbitrator has assessed \$1,725.00 of the forum fees to Respondent.

EEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	<u>= \$1,725.00</u>
Total Fees	= \$1,900.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 925.00

2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$2,625.00
<u>Forum Fees</u>	<u>= \$1,725.00</u>
Total Fees	= \$4,350.00
<u>Less payments</u>	<u>= \$2,625.00</u>
Balance Due NASD Dispute Resolution	= \$1,725.00

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

ARBITRATION PANEL

Charles Sydnor Thompson, JD	-	Public Arbitrator, Presiding Chairperson
Glenn A. Clinefelter	-	Public Arbitrator, Panelist
Wendy J. Reyner	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

*Charles Sydnor Thompson*

Charles Sydnor Thompson, JD  
Public Arbitrator, Presiding Chairperson

*March 7, 2005*  
Signature Date

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Glenn A. Clinefelter  
Public Arbitrator, Panelist

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

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Wendy J. Reyner  
Non-Public Arbitrator, Panelist

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

*March 8, 2005*

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

Concurring Arbitrators' Signatures

Charles Sydnor Thompson, JD  
Public Arbitrator, Presiding Chairperson

Signature Date

Glenn A. Clinefelter  
Glenn A. Clinefelter  
Public Arbitrator, Panelist

3/7/05  
Signature Date

Wendy J. Reyner  
Non-Public Arbitrator, Panelist

Signature Date

March 8, 2005

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

Concurring Arbitrators' Signatures

Charles Sydnor Thompson, JD  
Public Arbitrator, Presiding Chairperson

Signature Date

Glenn A. Clinefelter  
Public Arbitrator, Panelist

Signature Date

Wendy J. Reynet  
Wendy J. Reynet  
Non-Public Arbitrator, Panelist

03/07/05  
Signature Date

March 8, 2005

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