

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

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In the Matter of the Arbitration Between

Name of Claimant

Virginia L. Bratton

vs.

04-01166  
Oklahoma City, Oklahoma

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,  
Michael J. Couch, and  
Walter H. Johnson

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**NATURE OF THE DISPUTE**

Customer vs. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Virginia L. Bratton ("**Claimant**") was represented by was represented by Rohit C. Sharma, Esq., of David Garrett Law Office, P.C., Muskogee, Oklahoma.

Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, and Walter H. Johnson ("**Respondents**") were represented by Joseph L. Hood, Jr., Esq. of Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C., El Paso, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 23, 2004. The Submission Agreement of Claimant, Virginia L. Bratton, was signed on or about February 6, 2004. Claimant's Amended Statement of Claim was filed on or about August 27, 2004.

Claimant's Motion to Dismiss was filed on or about November 29, 2004.

Statement of Answer was filed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, and Walter H. Johnson on or about May 3, 2004. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., did not file a Submission Agreement. The Submission Agreement of Respondent, Michael J. Couch, was signed on or about April 22, 2004. The Submission Agreement of Respondent, Walter H. Johnson, was signed on or about April 22, 2004. Respondents' Answer to the Amended Statement of Claim was filed on or about September 2, 2004.

Respondents' Motion to Dismiss was filed on or about April 29, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: Oklahoma Statutory Securities Fraud; negligence; negligent failure to supervise; breach of contract; control person liability; suitability; improper allocation; breach of fiduciary duty; constructive fraud; and liability as a master and/or principal or under respondeat superior. The causes of action relate to the recommendation and order execution of various securities investments. Claimant alleged that the Respondents were negligent in placing her investment portfolio into unsuitable stocks without any reasonable factual basis, which eventually led to drastic losses in the value of her portfolio.

Unless specifically admitted in their Answer, Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, and Walter H. Johnson, denied the allegations made in the Statement of Claim and asserted affirmative defenses that including the following: Respondents deny that Mr. Couch or Mr. Johnson ever recommended that Bratton buy, sell or hold a security that was unsuitable, and deny that any loss she sustained was due to any act, omission or misconduct on the part of Mr. Couch, Mr. Johnson, or anyone else associated with Merrill Lynch; Bratton had the final say regarding every security that was bought, sold, and held for her account; and Messrs. Couch and Johnson and Merrill Lynch dealt with Bratton in good faith, and violated no Rule or Regulation of the Exchange, any other self-regulatory organization, or the Securities and Exchange Commission.

### **RELIEF REQUESTED**

Claimant requested an award of \$60,000.00 as compensatory damages, \$300,000.00 in costs, punitive damages, interest and attorney's fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorney's fees, and that the Panel order any reference to this claim be expunged from the CRD records of Mr. Couch and Mr. Johnson.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the Hearing on the Merits of this matter, the Claimant's Motion to Dismiss Respondent, Walter H. Johnson, from this dispute was granted by the Panel of Arbitrators.

The Respondent's Motion to Exclude Certain Evidence, which alleged Claimant's failure to comply with NASD Rule 10321 (C), was overruled with the Panel determining that each piece of documentary evidence by Claimant would be considered as it was or was not offered into evidence.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Claimant's claims, each and all, against Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, and Walter H. Johnson, are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael J. Couch's and Walter H. Johnson'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 Couch's and Johnson's 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.
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 fees for each claim:

Initial claim filing fee = \$300.00

**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 event(s) giving rise to the dispute. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

**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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session with Panel	x	1,125.00	\$	1,125.00
August 25, 2004	1 session			
2 Hearing sessions	x	1,125.00	\$	2,250.00
November 30, 2004	2 Sessions			
Total Forum Fees			\$	3,375.00

The Arbitration Panel has assessed \$1,687.50 of the forum fees to Virginia L. Bratton.

The Arbitration Panel has assessed \$1,687.50 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, and Walter H. Johnson.

**Fee Summary**

Claimant, Virginia L. Bratton is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	1,687.50
Total Fees	= \$	1,987.50
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	562.50

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

Member Fees	= \$	5,200.00
<u>Member Fees</u>	= \$	<u>5,200.00</u>
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, Walter H. Johnson, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	<u>1,687.50</u>
Total Fees	= \$	1,687.50
<u>Less payments</u>	= \$	<u>-0.00</u>
Balance Due NASD Dispute Resolution	= \$	1,687.50

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

**ARBITRATION PANEL**

Leslie L. Conner, Jr., Esq. - Public Arbitrator, Presiding Chair  
Rowland Denman - Public Arbitrator  
R. Randall Richison - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Leslie L. Conner, Jr., Esq.  
Leslie L. Conner, Jr., Esq.  
Public Arbitrator, Presiding Chair

12/06/04  
Signature Date

/s/ Rowland Denman  
Rowland Denman  
Public Arbitrator

12/06/04  
Signature Date

/s/ R. Randall Richison  
R. Randall Richison  
Non-Public Arbitrator

12/06/04  
Signature Date

12/07/04  
Date of service

Member Fees	= \$	5,200.00
<u>Member Fees</u>	= \$	<u>5,200.00</u>
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, Walter H. Johnson, are jointly and severally liable for:

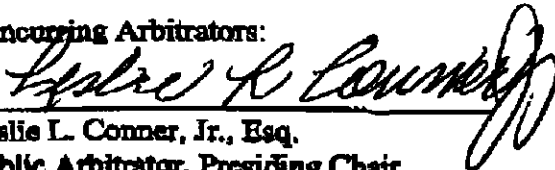
<u>Forum Fees</u>	= \$	1,687.50
Total Fees	= \$	1,687.50
<u>Less payments</u>	= \$	<u>-0.00</u>
Balance Due NASD Dispute Resolution	= \$	1,687.50

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Rowland Denman - Public Arbitrator  
R. Randall Richison - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

12/06/2004  
Signature Date

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Rowland Denman  
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Arbitration No. 04-01166  
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Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, Walter H. Johnson,  
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Forum Fees	= \$	1,687.50
<u>Total Fees</u>	= \$	<u>1,687.50</u>
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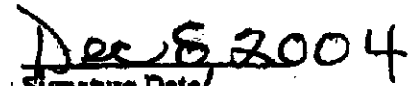
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NASD Dispute Resolution  
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Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Michael J. Couch, Walter H. Johnson, are jointly and severally liable for:

Forum Fees	= \$	1,687.50
Total Fees	= \$	1,687.50
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	1,687.50

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*12-6-04*  
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