

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Mary E. Powell  
Irene L. Rind  
Estate of Marguerite Pickett

Case Number: 04-01199

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Bradley L. Cottrill  
Edith Wernick

Hearing Site: Baltimore, Maryland

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

REPRESENTATION OF PARTIES

Claimants, Mary E. Powell ("Powell"), Irene L. Rind ("Rind"), and the Estate of Marguerite Pickett, hereinafter collectively referred to as "Claimants", were represented by William A. Healy, Esq., Westminster, Maryland.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Edith Wernick ("Wernick"), were represented by Ira L. Oring, Esq., Fedder and Garten Professional Association, Baltimore, Maryland.

CASE INFORMATION

Statement of Claim filed on February 23, 2004.

Claimant Powell signed the Uniform Submission Agreement individually and as Personal Representative of the Estate of Marguerite Pickett on February 19, 2004.

Claimant Rind signed the Uniform Submission Agreement on February 19, 2004.

Statement of Answer filed by Respondents Merrill Lynch and Wernick on April 28, 2004.

Respondent Wernick signed the Uniform Submission Agreement on April 21, 2004.

A representative of Respondent Merrill Lynch executed an undated Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action, among others: negligence, breach of contract, breach of fiduciary duty, fraud, unauthorized trading, unsuitability, violation of state and federal securities laws, and failure to supervise. The causes of action relate to the purchase of Equitable variable annuities and the purchase of shares in various mutual funds including Calvert Income Fund, Pioneer High Yield Fund, EV Worldwide Health Sciences Fund, Pimco Innovation Fund, and Blackrock International Smallcap..

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Wernick denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim is barred by the doctrines of laches, waiver, ratification, and estoppel; assumption of the risk; failure to mitigate damages; and statute of limitations.

**RELIEF REQUESTED**

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 400,000.00
Punitive Damages	\$1,200,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed and that all references to this arbitration be expunged from Respondent Wernick's record maintained by the NASD Central Registration Depository ("CRD").

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Cottrill filed for bankruptcy prior to the institution of this arbitration, and the claims against him were accordingly stayed.

The parties have fully and finally settled all claims by and between them. Therefore the parties submit this Stipulated Award to the Arbitration Panel (the "Panel") for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

**AWARD**

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted as follows:

1. The parties have reached a settlement of all claims asserted in this matter;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Wernick's registration records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Wernick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All claims for punitive damages and attorneys' fees are denied in their entirety;

4. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein 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 = \$ 500.00

##### 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, Merrill Lynch is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$8,550.00

##### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 @ \$1,200.00 = \$1,200.00

Pre-hearing conference: September 7, 2004 1 session

Total Forum Fees = \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally to Respondents Merrill Lynch and Wernick.

#### FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$1,100.00
Less payments	= \$1,700.00
Amount refunded by NASD Dispute Resolution	= \$ 600.00

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

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$9,150.00
Amount refunded by NASD Dispute Resolution	= \$ 600.00

4. Respondents Merrill Lynch and Wernick are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 00.00

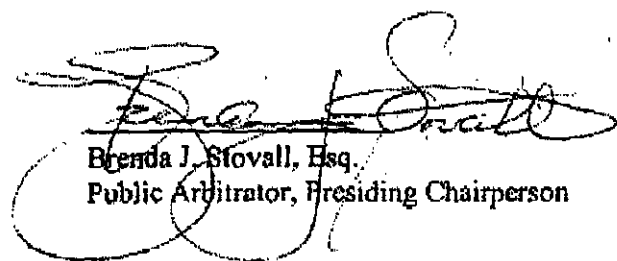
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Brenda J. Stovall, Esq.	-	Public Arbitrator, Presiding Chairperson
James W. Geiger	-	Public Arbitrator, Panelist
Bonnie K. Wachtel, Esq.	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures



Brenda J. Stovall, Esq.  
Public Arbitrator, Presiding Chairperson

October 13, 2005  
Signature Date

James W. Geiger  
Public Arbitrator, Panelist

Signature Date

Bonnie K. Wachtel, Esq.  
Non-Public Arbitrator, Panelist

Signature Date

11/3/05  
Date of Service (For NASD Dispute Resolution office use only)

Dissenting Arbitrator's Signature

  
James W. Geiger  
Public Arbitrator, Panelist

  
Signature Date

Concurring Arbitrators' Signatures

Brenda J. Stovall, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

James W. Geiger  
Public Arbitrator, Panelist

Signature Date

Bonnie K. Wachtel  
Bonnie K. Wachtel, Esq.  
Non-Public Arbitrator, Panelist

10-12-05  
Signature Date

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