

**Stipulated Award
NASD Dispute Resolution**

MERLE R. POUNDS, M.D.,

Claimant,

vs.

MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED and DALE
REED,

Respondents.

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NASD# 04-01380
DALLAS, TEXAS

NATURE OF THE DISPUTE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Merle R. Pounds, hereinafter referred to as "Claimant," was represented by Larry Lesh, 5949 Sherry Lane, Suite 501, Dallas, Texas 75225.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Dale Reed ("Reed")(collectively, "Respondents"), were represented by John Kincade and Chad Robinson, Winstead Sechrest & Minick P.C., 5400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270-2199.

CASE INFORMATION

Claimant filed the Statement of Claim on or about February 26, 2004.

Claimant submitted his Uniform Submission Agreement on February 25, 2004.

Respondents filed the Statement of Answer on or about May 21, 2004.

Respondents submitted their Uniform Submission Agreement on or about July 28, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: Breach of Fiduciary Duty, violation of the Texas Securities Act and Texas Deceptive Trade Practices Act, Fraud, Negligent and Gross Negligence, and Unsuitability.

Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's alleged damages were illusory, Claimant failed to state a claim, Claimant

failed to particularize facts or legal theories under which Respondents could be held liable, Claimant self directed the account(s), Claimant directed, authorized, consented to, acquiesced and/or ratified all transactions in the account(s), Claimant made the investment decisions he complained of, Claimant's alleged losses were due to his investment decisions or market conditions outside Respondents' control and Respondents acted properly and in good faith, Respondents made no guarantee to Claimant, Claimant's claims are barred by waiver and estoppel, Claimant failed to mitigate his alleged damages, statute of limitations, economic loss rule, unclean hands, and double recovery due to a parallel proceeding.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

Compensatory Damages	\$918,178
Punitive Damages	at least \$100,000
Interest	Unspecified
Other Monetary/Non-Monetary Relief if any:	Attorney's fees and costs

In their Answer, Respondents sought reimbursement of their attorneys' fees and expenses from Claimant and that this Complaint/Proceeding be expunged from Mr. Reed's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

The parties settled this dispute. Claimant and Respondents have executed a Settlement Agreement and Release. As part of the consideration for the settlement, Claimant agreed not to oppose the expungement of this matter from Reed's CRD.

STIPULATED AWARD

Pursuant to the parties' agreement, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondents are hereby dismissed with prejudice.
2. Respondents' claim against Claimant is hereby dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned complaint from Reed'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, Reed must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all relief not specifically addressed herein is denied with prejudice.

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
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Merrill Lynch is a member firm.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 31, 2005-February 3, 2005 adjournment by Claimant	= \$ 1,200.00
May 17, 2005-May 20, 2005 joint adjournment to mediate (Waived by NASD Dispute Resolution)	= \$ 1,200.00

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 single arbitrator @ 450.00	= \$ 450.00
Pre-hearing Conference Date: December 1, 2004 1 session	
One (1) Pre-hearing session(s) with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: August 17, 2004 1 session	
Total Forum Fees	= \$ 1,650.00

The Panel has assessed ½ forum fees in the amount of \$825.00 to Claimant Merle R. Pounds, and has assessed ½ forum fees in the amount of \$825.00 to Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Dale Reed, jointly and severally.

FEE SUMMARY

Claimant Merle R. Pounds is liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 825.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 2,525.00
<u>Less payments</u>	<u>= \$ 2,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 75.00

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

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are liable for:

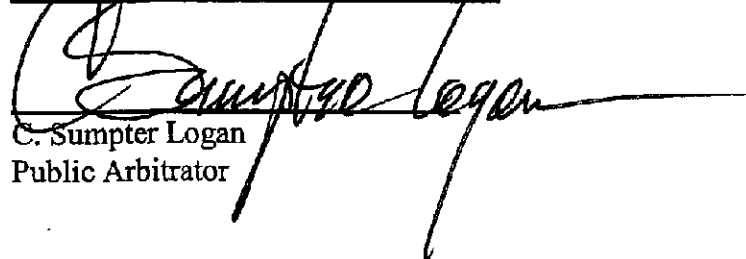
Forum Fees	= \$ 825.00
<u>Less payments</u>	<u>= \$ 1,000.00</u>
Balance Refunded to Merrill Lynch by NASD Dispute Resolution	= \$ 175.00

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

ARBITRATION PANEL

C. Sumpter Logan – Public Arbitrator
Albert Earl Ladd – Industry Arbitrator

Concurring Arbitrators' Signatures


C. Sumpter Logan
Public Arbitrator

7/18/05
Signature Date

Albert Earl Ladd
Industry Arbitrator

Signature Date

7/26/05 

Date of Service (For NASD Dispute Resolution use only)

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 825.00
<u>Adjournment Fee</u>	= \$ 1,200.00
Total Fees	= \$ 2,525.00
<u>Less payments</u>	= \$ 2,450.00
Balance Due NASD Dispute Resolution	= \$ 75.00

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<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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<u>Less payments</u>	= \$ 1,000.00
Balance Refunded to Merrill Lynch by NASD Dispute Resolution	= \$ 175.00

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C. Sumpter Logan – Public Arbitrator
Albert Earl Ladd – Industry Arbitrator

Concurring Arbitrators' Signatures

C. Sumpter Logan
Public Arbitrator

Signature Date

Albert Earl Ladd
Albert Earl Ladd
Industry Arbitrator

July 18, 2005
Signature Date

7/26/05 Mm Date of Service (For NASD Dispute Resolution use only)

AGREED:

Law Office of Larry M. Lesh
5949 Sherry Lane, Suite 501
Dallas, Texas 75225
Telephone: (214) 237-8598
Facsimile: (214) 739-1919

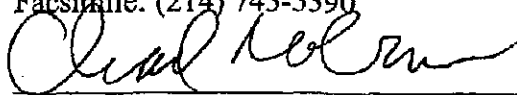
By: 

Larry Lesh SB# 12225000

ATTORNEY FOR MERLE POUNDS

AGREED:

Winstead Sechrest & Minick P.C.
5400 Renaissance Tower
1201 Elm St.
Dallas, Texas 75270
Telephone: (214) 745-5400
Facsimile: (214) 745-5390



John Kincade SB# 11429600
Chad E. Robinson SB# 24037373

**ATTORNEYS FOR MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED
AND DALE REED**