

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Peggy S. Smith

and

Case Number: 04-01635
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
John S. Kloss

NATURE OF CASE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Peggy S. Smith, ("**Claimant**") was represented by Robert E. Lapin, Esq., Lapin & Landa, L.L.P., Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Merrill Lynch**") and John S. Kloss ("**Kloss**") hereinafter collectively referred to as "Respondents," were represented by Jack D. Ballard, Esq., The Ballard Law Firm, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about: March 9, 2004. The Uniform Submission Agreement of Peggy S. Smith was signed on or about February 2, 2004.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and John S. Kloss, on or about May 3, 2004. The Uniform Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about March 25, 2004. The Uniform Submission Agreement of Respondent, John S. Kloss, was signed on or about April 15, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: negligence, unsuitability, failure to supervise, breach of duty of good faith and fair dealing and breach of fiduciary duty. The causes of action related to various transactions in Claimant's IRA accounts at Merrill Lynch.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and John S. Kloss, denied the allegations made in the Statement of Claim and asserted defenses including the following: to the

extent Claimant incurred any damages, such damages were attributable to market conditions and not to any acts or omissions of Respondents; estoppel; waiver; ratification; commercial reasonableness; assumption of risks; compliance with Exchange rules and regulations; laches; failure to mitigate; contributory negligence; and failure to state a claim upon which relief can be granted.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$290,000.00
Punitive/Exemplary Damages	\$200,000.00
Attorney's Fees	Unspecified
Other Costs	Unspecified
Interest	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that an award recommending an expungement of the claims asserted against John S. Kloss be entered by the panel.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant and Respondents advised NASD that on or about October 19, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

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 remains on file with the NASD Dispute Resolution ("NASD").

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators orders as follows:

1. Claimant's claims against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and John S. Kloss, are dismissed with prejudice;
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent, John S. Kloss', registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to the NASD Notice to Members 99-09, Respondent, John S. Kloss, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

3. Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
4. Any and all relief not specifically addressed herein, including attorneys' fees and costs is denied and all claims are dismissed 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	= \$ 300.00
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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. 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

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 30, 2004 1 session	
One (1) Hearing session @ \$1,125.00	= \$ 1,125.00
Hearing: November 4, 2004 1 session	
<hr/>	
Total Forum Fees	= \$ 2,250.00

The panel assessed \$562.50 of the forum fees to Peggy S. Smith.

The panel assessed \$562.50 of the forum fees to jointly and severally to Merrill Lynch, Pierce, Fenner & Smith, Inc., and John S. Kloss.

The panel assessed \$1,125.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

Claimant, Peggy S. Smith, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$1,425.00
Balance Refunded to Claimant	= \$ 562.50

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

Member Fees	= \$5,200.00
Forum Fees	= \$1,125.00
Total Fees	= \$6,325.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$1,125.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc., and John S. Kloss, are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

James Mervin Benson, Jr. Esq. - Public Arbitrator, Presiding Chair
Peter Sterling - Public Arbitrator
Walter Schleyer - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ James Mervin Benson, Jr., Esq.
James Mervin Benson, Jr. Esq.
Public Arbitrator, Presiding Chair

November 8, 2004
Signature Date

/s/ Peter D. Sterling
Peter D. Sterling
Public Arbitrator

November 8, 2004
Signature Date

/s/ Walter Schleyer
Walter Schleyer
Non-Public Arbitrator

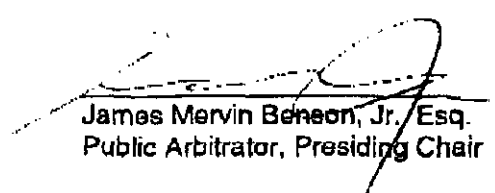
November 9, 2004
Signature Date

November 9, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Peter Sterling - Public Arbitrator
Walter Schleyer - Non-Public Arbitrator

Concurring Arbitrators' Signatures



James Mervin Benson, Jr. Esq.
Public Arbitrator, Presiding Chair

11-8-04

Signature Date

Peter D. Sterling
Public Arbitrator

Signature Date

Walter Schleyer
Non-Public Arbitrator

Signature Date

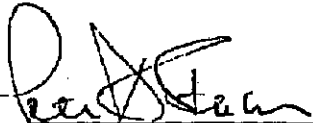
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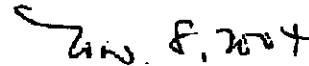
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