

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Donna H. Morse

Case Number: 04-01823

Names of the Respondents
Brad Zerbe
Brian Massingale
Rhonda Wolfe
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Pittsburgh, PA

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

REPRESENTATION OF PARTIES

Claimant, Donna H. Morse, hereinafter referred to as "Claimant", was represented by Robert Corish, Esq. and Adam L. Hill, Esq., Corish, Hill & Associates, PLLC, Herndon, Virginia.

Respondents, Brad Zerbe ("Zerbe"), Brian Massingale ("Massingale"), Rhonda Wolfe ("Wolfe"), and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter collectively referred to as "Respondents", were represented by Bill Powell Guest, Esq., Day, Edwards, Propester & Christensen, P.C., Oklahoma City, Oklahoma.

CASE INFORMATION

Statement of Claim filed on March 17, 2004.

Claimant signed the Uniform Submission Agreement on March 15, 2004.

Claimant's Response to Respondents' Answer filed on August 19, 2004.

Statement of Answer filed by Respondents Merrill Lynch, Massingale and Wolfe on July 20, 2004.

Respondent Zerbe on November 12, 2004 adopted the Answer filed by all other Respondents.

Respondent Zerbe filed an executed Uniform Submission Agreement on December 10, 2004.

Respondent Massingale filed an executed Uniform Submission Agreement on July 13, 2004.

Respondent Wolfe filed an executed Uniform Submission Agreement on July 13, 2004.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on June 9, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability; churning; failure to execute; and, manipulation. The causes of action relate to the purchase and sale of mutual funds, a large cap growth fund and technology stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses among others: statute of limitations; waiver, ratification, acquiescence and estoppel; contributory negligence; comparative fault; laches; assumption of the risk; failure to mitigate; and, authorization.

RELIEF REQUESTED

Claimant requested the following damages:

Compensatory Damages	\$66,623.97
Punitive Damages	\$30,000.00

Respondents requested that the Panel deny the claims in their entirety and expunge the records of Massingale and Wolfe.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the parties fully and finally settled all claims by and between them. Therefore, the parties submit this Stipulated Award to 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.

AWARD

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

1. The listed parties have amicably resolved their differences and have requested this Stipulated Award;
2. The Panel recommends the expungement of all reference to the above- captioned arbitration from Respondents Massingales's and Wolfe'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, Respondents Massingale and Wolfe must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. 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 = \$225.00

Member Fees

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

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

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 @ \$750.00	= \$750.00
Pre-hearing conference: November 12, 2004 1 session	

Total Forum Fees	= \$750.00
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1. The Panel has assessed \$375.00 of the forum fees to Claimant.
2. The Panel has assessed \$375.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 600.00
Less payments	= \$ 975.00
Refund Due from NASD Dispute Resolution	= \$ 375.00

2. Respondents are jointly and severally liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

3. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$3,550.00
Refund Due from NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Edward A. Grupp, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert Charkovsky, Esq.	-	Public Arbitrator, Panelist
Michael D. Neft	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Edward A. Grupp, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Robert Charkovsky, Esq.
Public Arbitrator, Panelist

Signature Date

Michael D. Neft
Public Arbitrator, Panelist

Signature Date

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

2. Respondents are jointly and severally liable for:

Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 375.00

3. Respondent Merrill Lynch is solely liable for:

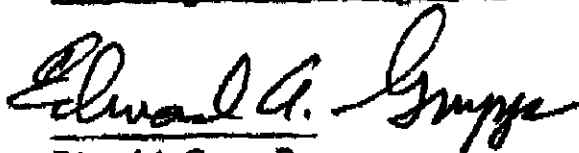
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Less payments	= \$3,550.00
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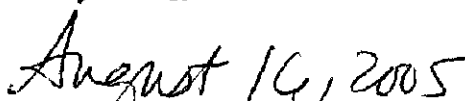
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