

**Stipulated Award  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Linda Guadarrama

Claimant,

vs.

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Respondents.

Case Number: 04-01864

Hearing Site: Dallas, Texas

---

**NATURE OF CASE**

Customer versus Member Firm.

**REPRESENTATION OF PARTIES**

Claimant Linda Guadarrama ("Claimant"): Jonathan A. Pace, Pace & Rickey, LLP, Meadows Building, Suite 940, Dallas, Texas 75206.

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Jack D. Ballard, The Ballard Law Firm, 3700 Buffalo Speedway, Suite 250, Houston, Texas 77098.

**CASE INFORMATION**

The Claimant's Statement of Claim was filed on or about: March 18, 2004.

The Submission Agreement of Claimant was signed on or about: March 11, 2004.

Respondents' Answer was filed on or about: May 18, 2004.

The Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") was signed on or about: April 28, 2004.

On or about December 9, 2004, Claimant and Respondent reached an agreement to settle the claims asserted in the arbitration proceeding, and Claimant has executed a General Release and Settlement Agreement.

**CASE SUMMARY**

Claimant asserted Merrill Lynch failed to timely liquidate her accounts. The cause of action relates to investments held in Claimant's accounts at Merrill Lynch.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: (i) to the extent Claimant incurred any damages, such damages were attributable to market conditions and not to any acts or omissions of Respondent; (ii) estoppel; (iii) ratification; (iv) failure to mitigate; (v) waiver; (iv) assumption of risk by Claimant; (viii) failure to state a claim; (ix) that Respondent at all times acted in good faith and in a commercially reasonable manner with respect to Claimant's accounts; (x) that Claimant's claims are barred by laches or the applicable statute of limitation; and (xi) that an award of punitive or exemplary damages would be in violation of the United States and Texas Constitutions.

**RELIEF REQUESTED**

Claimant initially requested:

|  |  |
|--|--|
| Compensatory Damages                       | \$18,250.00  |
| Punitive Damages                           | Unspecified  |
| Interest                                   | Unspecified  |
| Attorneys' Fees                            | Pursuant to Texas Civil Practice &<br>Remedies Code 38.001 <u>et. seq.</u> for a<br>breach of contract |
| Other Costs                                | Unspecified  |
| Other Monetary/Non-Monetary Relief if any: | Unspecified  |

Respondent initially requested that the relief in the Statement of Claim be denied in all respects, that the Statement of Claim be dismissed in its entirety, that Respondent recover its attorneys' fees and all the NASD fees and costs of this arbitration, and for such other and further relief as the Panel deemed just and proper.

In light of the settlement of the claims, Claimant and Respondent request that all claims in this case be dismissed with prejudice and Respondent requests and Claimant has agreed not to oppose the expungement of Claimant's complaint from the CRD record of Suzann Farren. In order to facilitate the expungement of the complaint from the CRD record of Suzann Farren, Respondent and Ms. Farren filed an Agreed Plea in Intervention and Request for Expungement that was agreed to by Claimant.

**OTHER ISSUES CONSIDERED AND DECIDED**

The case settled, and the Claimant has executed a General Release and Settlement Agreement.

This award was prepared, in part, based on a proposed award document submitted by Respondent.

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 (the "NASD").

**AWARD**

Pursuant to the parties' agreement, and after considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

1. All claims in this case are dismissed with prejudice pursuant to the parties' settlement agreement;
2. That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses, including attorneys' fees, incurred in this matter.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Suzann Farren's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to the NASD Notice to Members 99-09, Suzann Farren must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. That any relief not specifically enumerated, including punitive damages and attorneys' fees, is

hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

|                          |             |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 125.00 |
|--------------------------|-------------|

#### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith Incorporated.

|                  |             |
|------------------|-------------|
| Member Surcharge | = \$ 425.00 |
|------------------|-------------|

#### **Adjournment Fees**

|  |       |
|--|-------|
| The following adjournment fees are assessed: | None. |
|--|-------|

#### **Forum Fees and Assessments**

The Arbitrator 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. Forum fees associated with these proceedings are:

|   |             |
|---|-------------|
| One (1) Pre-hearing conference session) with a single arbitrator @ \$450.00/session | = \$ 450.00 |
| Pre-hearing conference: September 8, 2004.  | 1 session   |

---

|                  |             |
|------------------|-------------|
| Total Forum Fees | = \$ 450.00 |
|------------------|-------------|

The Arbitration Panel has assessed \$ 225.00 of the forum fees against Claimant Linda Guadarrama.  
The Arbitration Panel has assessed \$ 225.00 of the forum fees against Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Pursuant to NASD Code of Arbitration Procedure Rule 10332(f):  
Claimant Linda Guadarrama's Hearing Session Deposit of \$450.00 is retained by NASD and will be applied to the forum fee assessed above.

### **Fee Summary**

Claimant Linda Guadarrama is liable for:

|   |             |
|---|-------------|
| Initial Filing Fee                          | = \$ 125.00 |
| Rule 10332(f) Forfeiture                    | = \$ 450.00 |
| Total Fees                                  | = \$ 575.00 |
| Less payments                               | = \$ 675.00 |
| Balance Refunded by NASD Dispute Resolution | = \$ 100.00 |

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

|             |             |
|-------------|-------------|
| Member Fees | = \$ 425.00 |
|-------------|-------------|

NASD Dispute Resolution  
Arbitration No. 04-01864  
Award Page 4 of 4

|   |              |
|---|--------------|
| Forum Fees                                  | = \$ 225.00  |
| Total Fees                                  | = \$ 850.00  |
| Less payments                               | = \$1,175.00 |
| Balance Refunded by NASD Dispute Resolution | = \$ 525.00  |

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

ARBITRATION PANEL



Russell E. Rains  
Public Arbitrator, Presiding Chair

1-20-05  
Signature Date

1/25/05 R/m  
Date of Service (For NASD office use only)