

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Gary L. Everhart
Diane Everhart

Case Number: 04-01910

Name of the Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Robert M. Green, Jr.
Robert L. Dickson

Hearing Site: Charlotte, North Carolina

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

REPRESENTATION OF PARTIES

Claimants Gary L. and Diane Everhart, hereinafter collectively referred to as "Claimants", were represented by David Smith, Esq., Kilpatrick Stockton LLP, Winston-Salem, North Carolina.

Respondents Merrill Lynch Pierce Fenner & Smith "Merrill Lynch", Robert M. Green "Green", and Robert L. Dickson "Dickson", hereinafter collectively referred to as "Respondents", were represented by Angela A Turiano, Esq., Merrill Lynch Pierce Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on March 22, 2004.

Claimants signed the Uniform Submission Agreement on March 31, 2004.

Joint Statement of Answer filed by Respondents on May 17, 2004.

Respondent Dickson signed the Uniform Submission Agreement on June 16, 2004.

Respondent Green signed the Uniform Submission Agreement on June 16, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on June 16, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: negligence, breach of fiduciary duty, constructive fraud, fraud, and a violation of North Carolina General Stat. 78A-56.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, contributory negligence, failure to mitigate, ratification, and claims are barred by the defenses of estoppel, waiver, laches, and by the applicable statutes of limitation.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 250,000.00
Punitive Damages	\$ 250,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety, that the Panel issue an order that directs all references of this proceeding and the underlying complaint be expunged from the CRD records of the individual Respondents Green and Dickson, and that Respondents be awarded such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants and Respondents advise that on or about December 6, 2005, the parties 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.

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now in lieu of a hearing and upon motion of both parties for entry of such an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

1. All claims against Respondents are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Green and Dickson 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 Green and Dickson 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 = \$ 300.00

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, Respondent Merrill Lynch is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Total Member Fees = \$ 5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 1, 2, and 3, 2005, adjournment by Respondents = \$ 1,125.00

1. The Panel has assessed \$ 1,125.00 of the adjournment fees jointly and severally to Respondents.

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 a single arbitrator @ \$ 450.00 = \$ 450.00

Pre-hearing conference: April 1, 2005 1 session

One (1) Pre-hearing session with Panel @ \$ 1,125.00 = \$ 1,125.00

Pre-hearing conference: September 15, 2004 1 session

Total Forum Fees = \$ 1,575.00

1. The Panel has assessed \$ 787.50 of the forum fees to Claimants.

2. The Panel has assessed \$ 787.50 of the forum fees jointly and severally to Respondents.

FFF SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 787.50

Total Fees = \$ 1,087.50

<u>Less payments</u>	= \$ 1,425.00
<u>Refund Due Claimant</u>	= \$ 337.50

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

<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

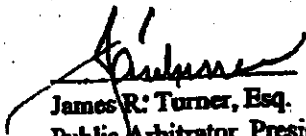
<u>Adjournment Fee</u>	= \$ 1,125.00
<u>Forum Fees</u>	= \$ 787.50
<u>Total Fees</u>	= \$ 1,912.50
<u>Less payments</u>	= \$ 3,375.00
<u>Refund Due Respondents</u>	= \$ 1,462.50

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

ARBITRATION PANEL

James R. Turner, Esq.	-	Public Arbitrator, Presiding Chairperson
Stuart W. Elliot	-	Public Arbitrator, Panelist
Pamela P. Pearson, Esq.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


James R. Turner, Esq.
Public Arbitrator, Presiding Chairperson

2-9-06
Signature Date

Stuart W. Elliot
Public Arbitrator, Panelist

Signature Date

Pamela P. Pearson, Esq.
Non-Public Arbitrator, Panelist

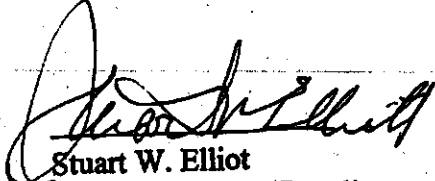
Signature Date

March 10 2006
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

James R. Turner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Stuart W. Elliot
Public Arbitrator, Panelist

February 11, 2006
Signature Date

Pamela P. Pearson, Esq.
Non-Public Arbitrator, Panelist

Signature Date

March 10 2006
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

James R. Turner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Stuart W. Elliot
Public Arbitrator, Panelist

Signature Date



Pamela W. Pearson, Esq.
Non-Public Arbitrator, Panelist

2/7/06

Signature Date

March 10, 2006
Date of Service (For NASD Dispute Resolution office use only)