

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Glenn R. Fisher and Doris J. Fisher, Claimants

Case Number: - 04-02034

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Eugene B. Carter, Respondents

Hearing Site: St. Louis, Missouri

NATURE OF THE DISPUTE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimants, Glenn R. Fisher and Doris J. Fisher (the "Fishers"), hereinafter collectively referred to as "Claimants": A. Daniel Woska, Esq. and Andrew J. Waldron, Esq. of Woska & Hayes, LLP, located in Oklahoma City, Oklahoma and Debra Brewer Hayes, Esq. of Woska & Hayes, LLP, located in Kingwood, Texas.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Eugene B. Carter ("Carter"), hereinafter collectively referred to as "Respondents": Edwin Noel, Esq. and Jacqueline Ulin Levy, Esq. of Armstrong Teasdale, LLP located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: March 22, 2004

Claimants signed the Uniform Submission Agreement: December 17, 2003

Statement of Answer jointly filed by Respondents Merrill Lynch and Carter on or about: June 8, 2004

Respondent Merrill Lynch signed the Uniform Submission Agreement: April 27, 2004

Respondent Carter signed the Uniform Submission Agreement: June 8, 2004

CASE SUMMARY

Claimants alleged that Respondents recommended unsuitable investments that were contrary to Claimants' investment goals and objectives, and that Claimants sustained losses in their accounts as a direct result of Respondents' alleged recommendations and misrepresentations. Claimants asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Know Your Customer Rule, unsuitability, failure to supervise, violation of securities regulatory rules, violation of the Missouri Uniform Securities Act (Missouri Blue Sky Law), violation of Missouri's Merchandising Practices Act, unauthorized trading, failure to hedge and various common law claims including, but not limited to, intentional and negligent misrepresentation, unjust enrichment, violation of the duty of good faith and fair dealing and negligence.

Unless specifically admitted in its Answer, Respondents Merrill Lynch and Carter denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; waiver, estoppel and ratification in that Claimants received confirmations for every trade that occurred in their accounts and actively reviewed their account activity on-line, and Claimants continued to request that Merrill Lynch and Carter make trades in their behalf and never once complained of unsuitable or unauthorized trading until the filing of the Statement of Claim; the "Bespeaks Caution" doctrine; failure to mitigate damages and assumption of the risk.

RELIEF REQUESTED

Claimants requested compensatory damages in the excess of \$95,000.00, plus all charges to Claimants' accounts, lost earnings on the accounts, punitive damages, interest and costs.

Respondents Merrill Lynch and Carter requested the Panel to dismiss the Statement of Claim in its entirety, and to assess all forum fees and costs against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants filed a motion to compel on March 10, 2005, which was denied in its entirety by the Chairman of the Arbitration Panel, without hearing, on March 29, 2005.

On March 9, 2005, Claimants filed a motion for expedited hearing and for sanctions and brief in support of not signing a Merrill Lynch confidentiality agreement. The Chairman of the Arbitration Panel denied the motion on April 22, 2005 after determining that the parties had reach an agreement with respect to the alleged discovery dispute and that Claimants' counsel had agreed to execute a confidentiality agreement with respect to the production of certain documents by Respondents.

On or about June 9, 2005, Claimants filed a Dismissal of Prejudice with respect to Respondent Carter, in which they stated that after a diligent investigation, they had determined that they did not have any viable legal claims to assert, individually or jointly, against Respondent Carter.

Based upon the aforementioned statement set forth in Claimants' Dismissal with Prejudice memorandum relating to Respondent Carter, and at the joint request of the parties, the Panel recommends the expungement of all references to this matter from Respondent Carter's registration records maintained by the NASD Central Registration Depository ("CRD").

On or about July 1, 2005, Claimants executed a General Release, pursuant to the parties' agreed-upon settlement.

On or about July 18, 2005, Respondents submitted a proposed Stipulated Award to the NASD with a request that the Arbitration Panel enter the Stipulated Award expunging all references to this matter from Respondent Carter's registration records maintained by the CRD.

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

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.) The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondent Merrill Lynch or any other person or entity. (Claimants dismissed their claims against Respondent Carter, with prejudice, on or about June 9, 2005).
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Eugene B. Carter's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Carter must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3.) Except as otherwise specified herein, the parties shall bear their own costs, including attorney's fees.
- 4.) All other requests for relief, which are not specifically addressed in this Award, including Claimants' request for punitive damages, are 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	= \$ 225.00
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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 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 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. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator	x \$450.00	= \$ 900.00
Pre-hearing conferences:	April 21, 2005 1 session	
	April 22, 2005 1 session	

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-Hearing conference: September 2, 2004 1 session	
Total Forum Fees	= \$1,650.00

The parties have agreed to pay forum fees as follows:
Claimant shall pay \$825.00; and
Respondents Merrill Lynch and Carter shall pay \$825.00.

Fee Summary

Claimants, Glenn R. Fisher and Doris J. Fisher, are hereby jointly liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 825.00
Total Fees	= \$1,050.00
Less payments	= \$1,050.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Eugene B. Carter, are hereby jointly and severally liable for:

Forum Fees	= \$ 825.00
Less payments	= \$ 825.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

John R. Loss	-	Public Arbitrator, Presiding Chairperson
Raymond R. Hirsch, Esq.	-	Public Arbitrator
Raymond Przybylowski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ John R. Loss
John R. Loss
Public Arbitrator, Presiding Chair

9/8/05
Signature Date

/s/ Raymond R. Hirsch, Esq.
Raymond R. Hirsch, Esq.
Public Arbitrator

9/12/05
Signature Date

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/s/ Raymond Przybylowski
Raymond Przybylowski
Non-Public Arbitrator

9/8/05
Signature Date

9/12/05
Date of Service (For NASD office use only)

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John R. Loss
Public Arbitrator, Presiding Chair


Signature Date

Raymond R. Hirsch, Esq.
Public Arbitrator

Signature Date

NASD Dispute Resolution

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- Public Arbitrator, Presiding Chairperson

- Public Arbitrator

- Non-Public Arbitrator

Concurring Arbitrators' Signatures

John R. Loss

Public Arbitrator, Presiding Chair

Signature Date


Raymond R. Hirsch, Esq.

Public Arbitrator


Signature Date

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Raymond Przybylowski
Non-Public Arbitrator

Date of Service (For NASD office use only)

9-8-2005
Signature Date