

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Denise Praizler, Individually, and on behalf of
the Denise Praizler IRA
and Denise Praizler RRA Accounts

v.

04-02103
Denver, Colorado

Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

Nature of Dispute: Customers v. Member

REPRESENTATION OF PARTIES

Denise Praizler, Individually, and on behalf of the Denise Praizler IRA and Denise Praizler RRA Accounts, hereinafter referred to as "**Claimants**," were represented by Donald C. Deagle, Esq., and Douglas A Wolkin, Esq., of Deagle & Wolkin, P.C., Parker, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc., "**Merrill Lynch**" or "**Respondent**," was represented by Brooke E. Pietrzak, Esq., of Dorsey & Whitney, LLP, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about March 8, 2004. The Submission Agreement of Claimants was signed on or about February 18, 2004.

The Statement of Answer was filed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., on or about June 10, 2004. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about April 29, 2004.

CASE SUMMARY

Claimants asserted causes of action including the following: suitability, breach of duty of fair dealing, failure to execute, negligence, failure to supervise, securities fraud and respondeat superior. The causes of action related to Claimant, Denise Praizler's allegation that contrary to her financial needs and goals, her investment advisor invested her accounts in various highly speculative technology, energy and pharmaceutical securities. Claimant, Denise Praizler, stated that she was not adequately informed of the potential risk to her principal in purchasing such securities and that Respondent allowed her investment advisor to trade on margin despite Claimant's contrary

instruction not to. Claimant, Denise Praizler, asserted that because Merrill Lynch failed to adequately supervise its employees and failed to protect her from unsuitable recommendations, her accounts suffered losses.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants' claims fail to state a cause of action against Respondent upon which relief can be granted; Claimant, Denise Praizler, had full control over the investment decisions in her accounts and approved/ratified all such investment decisions; the alleged losses sustained by Claimant, Denise Praizler, were proximately caused by her own conduct or negligence, thereby precluding her from recovery; all risks concerned in investing in stocks, bonds and trading securities were fully explained to Denise Praizler, and Ms. Praizler knowingly, willingly and voluntarily assumed the risks of investing in securities; and Respondent is not liable to Claimants in any amount because, at all times relevant, Respondent acted properly, in good faith and in a commercially reasonable manner with respect to Claimants' Merrill Lynch accounts.

RELIEF REQUESTED

Claimants requested an award in the amount of \$243,000 in compensatory damages, plus lost opportunity damages, interest, attorneys' fees, costs and any other relief the panel deemed just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimants, Denise Praizler, Individually, and on behalf of the Denise Praizler IRA and Denise Praizler RRA Accounts, the sum of One Hundred Ninety Eight Thousand Dollars and No Cents (\$198,000.00) in compensatory damages;

2. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimants, Denise Praizler, Individually, and on behalf of the Denise Praizler IRA and Denise Praizler RRA Accounts, interest on the above stated sum at the Colorado statutory rate from and including August 31, 2001 through and including the date this Award is paid in full;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee 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 firm that employed the associated persons 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$ 1,125 = \$ 1,125.00

Pre-hearing conference: 09/14/2004 1 session

Six (6) Hearing sessions with Panel x \$ 1,125 = \$ 6,750.00

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|----------------|------------|------------|
| Hearing Dates: | 01/31/2005 | 2 sessions |
| | 02/01/2005 | 2 sessions |
| | 02/02/2005 | 2 sessions |

Total Forum Fees = \$ 7,875.00

The Arbitration Panel has assessed \$ 3,937.50 of the forum fees jointly and severally to Denise Praizler, Individually, and on behalf of the Denise Praizler IRA and Denise Praizler RRA Accounts.

The Arbitration Panel has assessed \$ 3,937.50 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimants, Denise Praizler, Individually, and on behalf of the Denise Praizler IRA and Denise Praizler RRA Accounts, are jointly and severally liable for:

| | |
|-------------------------------------|----------------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | <u>= \$ 3,937.50</u> |
| Total Fees | = \$ 4,237.50 |
| <u>Less payments</u> | <u>= \$ 1,425.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 2,812.50 |

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

| | |
|-------------------------------------|----------------------|
| Member Fees | = \$ 5,200.00 |
| <u>Forum Fees</u> | <u>= \$ 3,937.50</u> |
| Total Fees | = \$ 9,137.50 |
| <u>Less payments</u> | <u>= \$ 5,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 3,937.50 |

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

ARBITRATION PANEL

Thaddeus J. Tecza, Ph.D - Public Arbitrator, Presiding Chair
Barbara A. Kozacik - Public Arbitrator
Gordon A. Yale, CPA- Non-Public Arbitrator

Concurring Arbitrators:

Barbara A. Kozacik
Public Arbitrator

Signature Date

Gordon A. Yale, CPA
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator:

Thaddeus J. Tecza, Ph.D
Public Arbitrator, Presiding Chair

Signature Date

2/2/05
Date of Service (NASD use only)

ARBITRATION PANEL

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Gordon A. Yale, CPA- Non-Public Arbitrator

Concurring Arbitrators:

Barbara A. Kozacik
Barbara A. Kozacik
Public Arbitrator

2/8/05
Signature Date

Gordon A. Yale, CPA
Gordon A. Yale, CPA
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator:

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