

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Walter I. Chapman, Jr.

Case Number: 04-02134

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Eugene D. Foxworth, III

Charles H. Maguire, III

Hearing Site: Charlotte, North Carolina

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

REPRESENTATION OF PARTIES

Claimant, Walter I. Chapman, Jr., hereinafter referred to as "Claimant", was represented by Richard S. Rosen, Esq. and Andrew D. Gowdown, Esq., Rosen, Rosen & Hagood, Charleston, South Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Eugene D. Foxworth, III ("Foxworth"), and Charles H. Maguire ("Maguire"), hereinafter collectively referred to as "Respondents", were represented by S. Lawrence Polk, Esq. and Bradley J. Cline, Esq., Sutherland, Asbill & Brennan LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on March 22, 2004.

Amended Statement of Claim filed on April 7, 2004.

Claimant signed the Uniform Submission Agreement on April 6, 2004.

Statement of Answer filed by Respondents on July 19, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on July 13, 2004.

Respondent Foxworth signed the Uniform Submission Agreement on July 14, 2004.

Respondent Maguire signed the Uniform Submission Agreement on July 14, 2004.

CASE SUMMARY

Claimant asserted the following causes of action, among others: unsuitability, failure to supervise, breach of fiduciary duty, negligence, breach of contract, and misrepresentation. The causes of action relate to the purchase and sale of variable annuities, stocks, and mutual funds, including class C mutual funds.

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 cause of

action upon which relief may be granted, laches, unclean hands, estoppel, contributory negligence, waiver, ratification, suitable, assumption of risk, claims are barred by the applicable statute of limitations, failure of due diligence, and failure to mitigate damages.

RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$ 350,000.00
Punitive Damages	\$ 100,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Non-Monetary Relief if any:	disciplinary referral

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs, and that reasonable attorney's fees be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On July 6, 2005, Claimant dismissed, with prejudice, his claims against Respondent Maguire.

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 Arbitration Panel (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. Claimant has dismissed his claims against Respondents Merrill Lynch, Foxworth, and Maguire with prejudice and requests entry of this Stipulated Award;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Foxworth and Maguire'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 Foxworth and

Maguire must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

4. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
5. 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
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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 firms that employed the associated persons 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
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

8/16/05 – 8/18/05, settled by parties on 8/15/05	= \$ 300.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: November 16, 2004 1 session	
<u>Total Forum Fees</u>	<u>= \$ 1,125.00</u>

1. The Panel has assessed \$ 562.50 of the forum fees to Claimant.

2. The Panel has assessed \$ 562.50 of the forum fees jointly and severally to Respondents.

FEES SUMMARY

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

Initial Filing Fee	= \$ 300.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 562.50</u>
<u>Retained Hearing Session Deposit</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

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

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

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

Three-Day Cancellation Fee	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 150.00

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

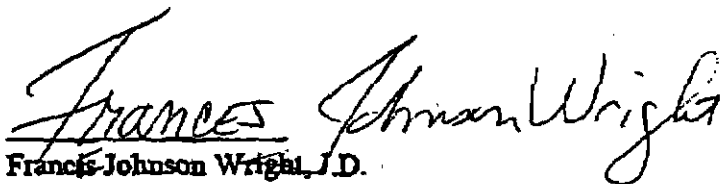
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

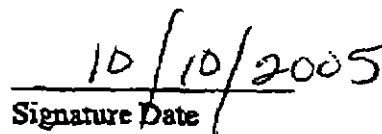
Francis Johnson Wright, J.D.	-	Public Arbitrator, Presiding Chairperson
Benjamin F. Richards, Jr.	-	Public Arbitrator, Panelist
Sidney L. Sussman	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Francis Johnson Wright, J.D.

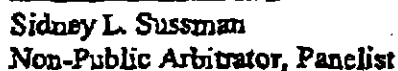
Public Arbitrator, Presiding Chairperson



Signature Date


Benjamin F. Richards, Jr.
Public Arbitrator, Panelist

Signature Date


Sidney L. Sussman
Non-Public Arbitrator, Panelist

Signature Date



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

Concurring Arbitrators' Signatures

Francis Johnson Wright, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

Benjamin F. Richards, Jr.

Benjamin F. Richards, Jr.
Public Arbitrator, Panelist

11 October 2005

Signature Date

Sidney L. Sussman
Non-Public Arbitrator, Panelist

Signature Date

October 11, 2005

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

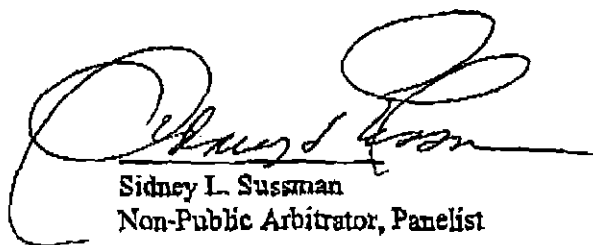
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Francis Johnson Wright, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

Benjamin F. Richards, Jr.
Public Arbitrator, Panelist

Signature Date


Sidney L. Sussman
Non-Public Arbitrator, Panelist

10/11/05
Signature Date

October 11, 2005
Date of Service (For NASD Dispute Resolution office use only)